United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 15,548

CIVIL.

FIRST IOWA HYDRO ELECTRIC COOPERATIVE, F. A. E. GILLMOR, HARRY J. STRONG, AND HARRY IMEL, APPELLANTS,

vs.

IOWA-ILLINOIS GAS AND ELECTRIC COMPANY, IOWA POWER AND LIGHT COMPANY, IOWA SOUTHERN UTILITIES COMPANY, INTERSTATE POWER COMPANY, UNION ELECTRIC POWER COMPANY, KANSAS CITY POWER AND LIGHT COMPANY, IOWA ELECTRIC LIGHT AND POWER COMPANY, NORTHWEST LIGHT AND POWER COMPANY, WISCONSIN POWER AND LIGHT COMPANY, IOWA PUBLIC SERVICE COMPANY AND IOWA UTILITIES ASSOCIATION, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

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[fol. 2] Abstract of Evidence and Proceedings

1. Hearing Before Judge Riley on Order for Rule to Show Cause on Motion to Quash Appearance of Bell, Farrar & Scott. September 2, 1955.

In response to question by Plaintiff Strong as to whether petition of plaintiffs to intervene filed September 2, 1955 had been acted upon, Court stated (Tr. 2-3):

"It is unnecessary for you to petition to intervene in this cause, because you are already a party to it. I will consider everything that is contained in this as a resistance to the motion to quash the appearance, but being already parties to the case it is unnecessary for leave to be granted you to intervene. You are already in the cause."

2. Hearing Upon Motion for Leave to Remove France, France & Nady and James R. McManus and Allan R. Shepherd as Attorneys for Plaintiffs. October 3, 1955.

Mr. McManus stated that France, France & Nady and James R. McManus and Allan R. Shepherd were present in person and as attorneys of record for the plaintiffs and objected in both capacities to the proceedings before the Special Master on the ground that the order of appointment was void under the Fifth and Seventh Amendments (Tr. 6-7).

The Master overruled the objection and stated that (Tr. 9):

"The objection, if good, would also appear to be premature."

Mr. McManus requested a continuance in the proceedings to investigate the proceedings in the Court of Appeals

by plaintiffs "because of our interest in the subject matter of this litigation" (Tr. 17). He stated that he desired the continuance "so that we can protect our rights by contesting the appearance of any lawyers purporting to represent these plaintiffs without our knowledge in the Circuit Court of Appeals for the Eighth Circuit" (ibid.).

[fol. 3] On direct examination by Mr. McManus, JOSEPH P. CONDON testified that he and others had turned over the sum of $10,000 to Mr. Jake More on representations of plaintiff Strong that the money would be used to pay Mr. McManus and Mr. X. C. Nady $5,000 each (Tr. 23-24). In response to the question "When did you first become aware Mr. Strong was using some of this money for his own needs?" Mr. Condon stated:

"When you didn't get it. Mr. More told me he didn't want to pay the lawyer. I don't know whether he used it for his own means or not, but you didn't get it, that's all" (Tr. 27).

Mr. Condon answered in the affirmative the question [illegible] do you desire that the $15,000 that you and Mr. [illegible]er and Mr. Drexler turned over to Mr. Strong be deposited in the registry of this Court to be used for the purposes that you gentlemen originally intended it to be?" (Tr. 29).

MR. NADY testified that (Tr. 60):

"The terms of our employment, that he would not be able to pay us fully as we went along in the litigation but that we would have sufficient money to maintain us and pay us what was necessary for our expenses, office expenses and overhead, during the time that we were to spend the great part of our time to this litigation, and I later entered the meeting where Mr. Strong reported that to the Board, and I think there are minutes in that Board where we were employed on a contingent basis, subject to being paid a reasonable amount as we went along."

[fol. 4] He further testified that he had performed extensive legal services and made out-of-pocket disbursements on behalf of First Iowa Hydro Electric Cooperative and the individual plaintiffs, and stated as follows (Tr. 66):

"Taking into consideration the responsibility assumed in a case of this size and the various legal problems to be met, and the work to be done, it is my opinion that our services—the services of our firm are worth a hundred thousand dollars to date."

Mr. Nady also testified with respect to the funds allegedly obtained from Mr. More that Mr. Strong had stated to Mr. Nady "that he had told Mr. More that he had raised the additional money required as a condition upon his making payment to us, but in fact he had not raised it, and that he had lied to More in getting possession of the money" (Tr. 67).

Mr. James D. France testified that he believed the services of France, France & Nady to date had been worth $100,000 (Tr. 73-74) and that the services of McManus and Shepherd had been worth a like amount (Tr. 75).

Mr. Allen R. Shepherd also testified that a $100,000 fee for the services of McManus and Shepherd would be "fair" (Tr. 90).

3. Proceedings in re Taking of the Deposition of Harry J. Strong, October 10, 1955. Transcript, Vol. 31.

Plaintiff Strong made the following statement: (Tr. 1934)

"Mr. Master, I am Harry J. Strong, Plaintiff, the witness called in this deposition.

"I am here unrepresented by counsel.

"The Court has been on notice since September 2nd, that we have discharged our counsel.

[fol. 5] "The Court has seen fit to freeze us in that position, and under those circumstances, and without counsel, I am going to decline to testify further.

"I want the record to show that there was filed in the Court this morning at 9:35 A. M., an affidavit of prejudice.

"I wish the record to further show that we request that any further action in this case be deferred until that matter is disposed of."

The Master advised Mr. Strong to testify and Mr. Strong declined (Tr. 1935). The Master advised Mr. Strong that "You may be held in contempt for refusal to testify." Mr. McManus then stated as follows (Tr. 1935):

"Let the record show that J. R. McManus and X. C. Nady, attorneys of record for the Plaintiffs in this proceeding are here and ready to proceed."

Mr. Strong then left the hearing room. Mr. Larned Waterman, one of the defendants' counsel, stated that Iowa-Illinois Gas & Electric Company would seek the sanctions provided by Rule 37. Mr. McManus then stated (Tr. 1935):

"That may be part of the strategy, I do not know."

4. Proceedings in re Deposition of Harry J. Strong, October 10, 1955. Transcript, Vol. 32.

In a colloquy concerning the Motion to Dismiss filed by the defendants on October 10, 1956, Mr. McManus requested maximum time to respond to the Motion (Tr. 1944). The Master replied that the grounds of the motion were "fairly simple" (Tr. 1945). In response, Mr. McManus stated (Tr. 1945):

"I am not talking about the grounds, I am talking about the fact that you have a $40 million lawsuit here, which is apparently being controlled, as far as the plaintiffs are concerned, by one man, and if this motion were

[fol. 6] sustained it could result in a summary dismissal of this lawsuit.

"I think in view of that situation, you should afford in the interest of justice ample time and opportunity for the plaintiffs and their counsel of record to resist the motion, and for that reason you should afford ample time."

5. Proceedings Before Special Master on Order to Show Cause. October 28, 1955.

Mr. McManus objected to the jurisdiction of the Special Master on the ground that his appointment was unlawful, constituted an abuse of discretion, and deprived plaintiffs and their attorneys of the Constitutional rights of a jury trial and due process of law under the Seventh and Fifth Amendments respectively (Tr. 2). The Master overruled the objection but stated (Tr. 3):

"If you care to take further part in the proceedings, why, that can be done without prejudice to the objections you have asserted."

Mr. McManus stated that none of the plaintiff's attorneys of record was consulted before the filing of the various papers mentioned in the Master's proposed Order attached to his Order of October 24, 1955 (Tr. 5-6). He also stated that (Tr. 6):

"And we haven't been instructed or requested by our clients, the plaintiffs, to make any resistance to any of these matters that appear on the first page of Exhibit 'A' attached to the Special Master's order of October 24th; nor have we been asked to present or bring the attention of the Special Master to any of the motions or the resistance that's mentioned on the first page of Exhibit 'A'."

[fol. 7] 6. Transcript of Proceedings prior to Argument on Motions to Dismiss. November, 18, 1955.

Plaintiff Strong noted an appearance (Tr. 3). Mr. Strong made the following statement (Tr. 5-6):

"Mr. Master, I would like to have the record state that on September 1, 1955 the First Iowa Hydro Electric Co-

operative and five individual plaintiffs, including myself, discharged the attorneys of record, having lost faith in that counsel. And we still have lost faith. We believe that since the 2nd day of September, when the Court was given notice of that action, the Court has seen fit to freeze us in a position where we have been unable to get counsel. I would like to have the record show that on Monday of this week I appeared before the Special Master, personally, and because of the orders of this Court or the Master refuses me, as an individual, or any of the other individual plaintiffs, the right to file anything in Court, and directs the Clerks of Courts not to receive anything, that I have attempted all week to get counsel to make an appearance, as is provided for in the order of the Master, to clear the way to where we can get counsel of our choosing. I have been unable to do so. It is our opinion we will be unable to get any Iowa attorney or attorneys in this judicial district to handle this matter. I will continue to pursue, as an individual, the effort to get counsel of my choosing —one whom we will have faith in. I feel that I have every right that any counsel could give me, in appearing in this or any other court of this United States."

[fol. 8] The Master sustained objection of Mr. Walker to any appearance by Mr. Strong (Tr. 6). Following the ruling, Mr. Strong stated (Tr. 6-7):

"I should like to have, Mr. Master, the record show that certain allegations were made—and made before this Master and this Court—that were heard by this Master, and which were made under oath and verified, and in which the record will show there was not one word of contradiction to those allegations. And those allegations went to the misconduct of counsel. And the record will show that the Court has completely ignored those allegations. The attorneys of record made not one word of record denying them and, therefore, that record stands and this Court has the responsibility that if and when something is made under verification and under oath, as an allegation, and not denied, it stands as the law that they are guilty of misconduct. The Court has seen fit to disregard that. The wisdom of the attorneys, of course, is far greater than mine as a layman. They saw fit to ignore it. For that reason I want this

objection to show in the record, in behalf of myself as an individual, that it is not a good order, nor is it in conformance with any law; and the responsibility rests upon this Court to protect the individuals, and particularly the plaintiffs, when they are without counsel. If that is the ruling of the Master I shall retire from the room."

The Master ordered that (Tr. 7):

"All statements made by Harry J. Strong in the course of this hearing, except the fact of his presence here, will be stricken from the record and will be given no effect."

[fol. 9] 7. Proceedings in re Deposition of Harry J. Strong December 20, 1955. Transcript, Vol. 33.

Mr. Shepherd objected to the jurisdiction of the Master (Tr. 1960). The Master ruled as follows (ibid.):

"The objection is overruled.

"Your participation in these proceedings will be understood to be without waiver of the objection." Mr. Strong made the following statement (Tr. 1964-1967):

"Mr. Master Doerr, I wish to make a statement before this hearing and for the record.

"I was called and appeared on October 10th to continue giving testimony in this deposition and declined to testify under my constitutional right of having counsel with me in whom I have faith and trust.

"The Court has been on notice since September 2nd that we discharged the attorneys of record, namely: France, France & Nady and J. R. McManus and Allen R. Sheppard.

"The Court knows we filed under oath allegations of misconduct; answer was made by these attorneys, not under oath. A hearing was held and these attorneys had their opportunity to deny the charges, but not one word appears in the transcript of denial; therefore our charges stand as proved.

"Without one single word of denial of this misconduct, you, Mr. Master, found there is no misconduct. That mat-

ter has been appealed to the 8th Circuit Court of Appeals. [fol. 10] I say now, it is up to the Appeals Court to dispose of that matter before it can go any further.

"Later in this very room and before you, Mr. Master, while you were presiding and in session, you brought up the question of my being cited for contempt of Court—the attorneys for the defense objected to my being cited—yet, and I am sure it is discharged attorneys, an attorney this court will not let us discharge, suggested to you, Mr. Master, that I should be cited quote, 'that may bring this boy to his senses' end quote. That is not in my best interest.

"Other of our discharged attorneys were present, heard this and did not say one word; thereby their silence was not defending my best interest. Their silence was complete acquiescence to what Mr. McManus said—that I should be cited for contempt of Court.

"Does anyone believe I should be compelled to give testimony in this Court without attorneys in whom I have trust and faith?

"As to the $2500 that the Court has ordered us to pay—to carry the costs of taking this deposition, I want it known that I purchased a bank check for the $2500 on September 28, 1955, then I called my associate plaintiffs to advise them. They insisted that I get legal advice as to the propriety of paying in this money.

"It was our understanding the Court ordered the Union Electric Company to pay all the costs. Without our knowl- [fol. 11] edge the attorneys we had went before the Court asking that this Utility pay them a fee while this deposition was being heard. I understand the Court denied same.

"In this very room Mr. Bergstrom, the expert in anti-trust law, said he was the one who got the words 'office rental' into the order, and therein lays the grounds for the Court to come at us to put up the $2500. This, too, has been appealed and should be disposed of before this Court can or should go any further with this particular matter.

"I say to you, we do not want this case dismissed because of our failure to pay into the Court the $2500. We do not have the $2500. What money as would be available,

and I say to you if we had our funds today, I would pay the $2500 into the Clerk of Court, but under protest.

"Our funds in the amount of $5,081.81 were improperly ordered turned over to a receiver in an involuntary bankruptcy case in this same Court (being Case No. 1-177) that money did not belong to the First Iowa Hydro Electric Cooperative. The Court knew this and ordered me to be put in jail—and I was put in jail until our attorney, in that case, turned the money over to the receiver.

"The Court was advised I turned this money over voluntarily to the attorney in that bankruptcy case, No. 1-177, on November 12, 1955, and I was put in jail on the 29th.

[fol. 12] "Our attorney advised me that I could not go to jail, that if I was cited, all that it took to purge the contempt was to turn it over, that the Court would have to hold a hearing or show cause, before anyone could be jailed. I was in jail. They say it can't be done, but I was there. I ordered the attorney to turn over the money, three days before I was jailed. The attorney for the receiver was fully advised of all this.

"This same attorney told me Judge Riley could be held personally liable for putting me in jail and not giving me a hearing.

"We were declared not bankrupt by the jury after two days of trial.

"This tangent case of bankruptcy has become a part of our lawsuit as here being heard. Our money is tied up until it is returned, if the funds are returned we will pay the $2500 into the Court.

"I cannot see how this Court with one hand can take our funds away from us and with the other hand say, pay $2500 or the main lawsuit will be dismissed.

"Again I say to you, Mr. Master, this whole thing has been appealed, notice of such appeal was made on November 26th, the filing fee was paid, and the bond has been furnished.

"The matter is from the moment of that Notice of Appeal being read by the Clerk of Court out of the juris-

diction of this Court, and I cannot understand the persistence to ignore it and continue on as if it were not filed.

[fol. 13] "Under the circumstances of the Court suppressing so much of the record that it is impossible for me to fully acquaint any attorney so he can come into this Court and properly protect my interests, and being without counsel of my own choice and in whom I have trust and faith, I believe I would be justified in refusing to testify.

"Therefore I stand upon my constitutional rights and ask that I be excused from testifying until I have counsel of my own choosing and in whom I have faith. I do not have faith in the attorneys here presuming to represent me.

"Your Honor, if you compel me to go on the witness stand, I am going on. I do not want to be in contempt of this Court, and I don't want to spend Christmas in jail. I ask that I be excused from testifying until I can get attorneys of my choice, and in whom I have faith while I am testifying on the witness stand."

The Master stated that Mr. Strong had "not been threatened with contempt procedure so far as I am aware in connection with these discovery deposition proceedings" (Tr. 1969). He denied the request that Mr. Strong be excused from testifying and instructed Mr. Strong to submit himself as a witness (ibid.).

Thereafter Mr. Strong again refused to testify "under my Constitutional rights, and not having an attorney present in whom I have faith and confidence" (Tr. 1975). The Master ruled that:

"The case for all practical purposes stands dismissed now as to Harry J. Strong and First Iowa Hydro Electric Cooperative.

[fol. 14] "The Supplemental Order will merely confirm that situation" (Tr. 1977).

8. Proceedings on Deposition of F. A. E. Gillmor, January 10, 1956.

Plaintiff Gillmor made the following statement at the opening of the hearing (Tr. 10-11):

"Gentlemen, I have been called to testify, and, Mr. Doerr, I am F. A. E. Gillmor, President of First Iowa Hydro Electric Cooperative. I wish to make a statement before this hearing and for the record.

"I am called here to give testimony when the case of the First Iowa Hydro Electric Cooperative stands dismissed by Master Doerr as per his order of December 22, 1955. The matter is now before Judge William F. Riley for his ruling on such dismissal and should be disposed of before any further proceeding, as is here and now contemplated.

"I and the other plaintiffs, discharged the attorneys of record for misconduct and the Court has been on notice of such action since September 2, 1955.

"The Court prefers to change our motion to remove the attorneys to one of substitution and improperly ruled accordingly.

"That matter is before the Circuit Court of Appeals and we feel confident it will be reversed. Also, the qualifications of this Master and his appointment will be before the Court of Appeals; that, too, I feel will be undone.

[fol. 15] "The appointment of the previous Master, Wayne Cook, will be before the Appeals Court; our showing of him, as in our opinion, being a chief counsel of the defendants deserves to be corrected.

"I, being without [consel] of my own choosing, with this Court's action making it impossible for me to get counsel in whom I have trust and faith—with this Court trying to compel me to give testimony with counsel in whom I have lost confidence, faith and trust, and knowing we have discharged those who presume to represent me, I will stand on my Constitutional rights and ask that I be excused from testifying."

The Master denied the request that Mr. Gillmor be excused from testifying (Tr. 11).

Mr. Gillmor stated of the plaintiffs' attorneys of record that they were "willing to sell us out and not work in our best interest" (Tr. 12) and he refused to testify.

Mr. McManus then made the following statement (Tr. 12):

"You just said that your attorneys are trying to sell you out. Do you have any evidence to substantiate or back up the statement that you made; because you are going to be given an opportunity to tell it to the Polk County Grand Jury very soon. So you had better be getting ready. If you have anything to say, I invite you to tell these gentlemen what you know to back up the statement you just made."

[fol. 16] 9. Proceedings on Deposition of Carl J. Mitzner. January 16, 1956.

Mr. McManus objected to the jurisdiction of the Special Master on the same grounds urged previously (Tr. 6-7). The Master ruled as follows (Tr. 7):

"The objection will be overruled. Your participation in the subsequent proceedings here will be without prejudice to that objection."

The Master stated as follows with respect to his prior order conditionally granting leave to plaintiffs to remove their attorneys of record (Tr. 60-61):

"There is no judgment against your Cooperative. There is no judgment against any individual plaintiff for that or any other sum as attorneys' fees.

"The sum is fixed only in relation to your own motion for privilege to discharge your attorneys. That privilege has been granted on condition that you pay their fees in the sum of $200,000, which was substantially the only figure mentioned in testimony at the hearing with relation to the discharge of your attorneys.

"That hearing was one which none of the plaintiffs attended."

Mr. Mitzner then made the following request (Tr. 61):

"Well, in thinking that over, your Honor, it just seemed to me only right and proper to ask you and the Court or state to you the privilege of examining into my ability to pay my share of that amount that has been stated as owing to these attorneys."

[fol. 17] The Master denied the request, it was repeated by Mr. Mitzner, and again denied (Tr. 61).

10. Proceedings Before District Court on Motions to Dismiss, etc., January 20, 1956.

In the course of the argument on the pending motions to dismiss the complaint, Mr. McManus responded as follows to a question from the Court as to suggested remedies for Mr. Strong's alleged misconduct other than dismissal (Tr. 34-35):

"I will have to confess that I myself am unable to explain or to justify Mr. Strong's conduct on any reasonable or rational basis. I have not talked to Mr. Strong since the 31st day of August of 1955. As everybody knows in this room, there has been a dispute between counsel of record and the plaintiffs in this case, especially Mr. Strong, but recently that situation has changed with respect to Mr. Imel, Mr. Mitzner and Mr. Naber, so that Mr. Mitzner and Mr. Imel and Mr. Naber have counselled with us this week as late as Tuesday, and apparently Mr. Strong is going down the same line that he has gone all along, by himself, but it has become increasingly apparent that the other directors are getting next to Mr. Strong, shall we put it."

He added the following (Tr. 35-36):

"The Special Master, Your Honor, as I understand the law, possesses no power to commit a person for contempt of court. That is only a power vested in the district judge, so that the only sanction that he could apply on the motion [fol. 18] and the record that was made before him was to sustain or recommend the sustaining of the motion to dismiss filed by the defendants because of his refusal and failure to testify, and his failure and refusal to put up the $2,500.

"Now, in a discussion of this kind I must be fair and honest and frank with the Court, that I am of the opinion that at all times they had the money to put up the $2,500,

so that I don't know of any justification or excuse for the failure and refusal of First Iowa Hydro Electric Cooperative to make the $2,500 deposit into the registry of this court under the order that the Court has made, and I don't intend to attempt to justify that because the records of this court show that during the bankruptcy proceeding they produced in the neighborhood of $5,000. I am told, although I know it only by hearsay, that that $5,000 that was deposited has been released and is in the hands of the lawyers who represented the First Iowa Hydro Electric Cooperative in the bankruptcy proceedings."

Mr. McManus further stated:

"We have advised all of these plaintiffs to testify and have requested them to testify, so that if this case is dismissed it penalizes the lawyers who are innocent of any wrongdoing" (Tr. 37).

During further discussions with the Court Mr. McManus stated that he would "not attempt to explain or to justify or to excuse the conduct of Mr. Strong" (Tr. 38). Of Mr. Gillmor, he said (Tr. 38):

[fn. 19] "Mr. Gillmor is a very old man who is under the domination of Mr. Strong and who is being led by Mr. Strong. If left to his own devices I am certain that Mr. Gillmor would do what was right. He is a high minded old gentleman possessed of his ideals, but he is being influenced and led by Mr. Strong, so that Mr. Strong by his wilfull conduct is penalizing the other four directors and the attorneys of record for the plaintiffs, so that I ask the Court to devise some means to keep the law suit in court in order to afford us time and opportunity to try to get the situation straightened out."

When the Court stated of Plaintiff Strong that "He has been guilty of contumacious conduct as one could possibly be guilty of" (Tr. 39), Mr. McManus replied: "I agree with Your Honor" (Ibid.).

[fol. 20] Complaint.

(Filed in U. S. District Court on February 18, 1954)

In the United States District Court for the Southern District of Iowa, Davenport Division.

First Iowa Hydro Electric Cooperative, F. A. E. Gillmor, Carl J. Mitzner, Harry J. Strong, Harry Imel, and P. H. Naber, Plaintiffs,

No. 1-224. vs. Civil Action.

Iowa-Illinois Gas and Electric Co., Iowa Power and Light Co., Iowa Southern Utilities Co., Interstate Power Co., Union Electric Power Co., Kansas City Power and Light Co., Iowa Electric Light and Power Co., Northwest Light and Power Co., Wisconsin Power and Light Co., Iowa Public Service Co., Iowa Utilities Association, Defendants.

[fol. 21] Come now the plaintiffs and for cause of action state:

1. That the jurisdiction of this Court to hear this complaint is based upon the ground that this Court has original jurisdiction of suits and proceedings arising under any United States law to protect trade and commerce against restraint and monopoly and, as hereinafter set forth, this [fol. 22] controversy involves violations of Sections 1, 2 and 7 of the Act known as the Sherman Anti-Trust Act, as amended (15 U. S. Code, Section 1, et seq.), and Sections 1, 4, 5 and 7 of the Act known as the Clayton Act, as amended (15 U. S. Code, Sections 12, 15 16 and 18).

2. That the plaintiff First Iowa Hydro Electric Cooperative is a cooperative association organized under and by virtue of the provisions of Chapter 390 G 1 of the 1935 Code of Iowa, on the 10th day of June, 1938, with its principal place of business at Muscatine, Iowa. That the plaintiffs, F. A. E. Gillmor, Carl J. Mitzner, Harry J. Strong, Harry Imel, and P. H. Naber, and each of them, are citizens of the State of Iowa and each and all of said plaintiffs bring this action on their own behalf and in behalf of First Iowa Hydro Electric Cooperative, and said individual plaintiffs constitute all of the members of the First Iowa Hydro Electric Cooperative and each own an equal one-fifth interest therein.

3. That on September 8th, 1948, the Federal Power Commission of the United States issued a license to First Iowa Hydro Electric Cooperative for the construction, operation and maintenance of Project License No. 1853, the effective date of the license as stated therein being September 1, 1948. That under and by virtue of the Articles of Incorporation and Federal Power Commission license plaintiff First Iowa Hydro Electric Cooperative was permitted and authorized to construct the project known as No. 1853 and to generate, transmit, sell and distribute electrict light and power resulting from the operation of said [fol. 23] project as constructed, within the area served by the corporate defendants named herein.

4. That except for defendant Iowa Utilities Association, each and all of the defendants herein named are private corporations and their names, states of incorporation, and principal places of business are:

Iowa-Illinois Gas and Electric Co., Illinois, Principal Place of Business, Davenport, Iowa,

Iowa Power and Light Co., Iowa, Principal Place of Business, Des Moines, Iowa.

Iowa Southern Utilities Co., Delaware, Principal Place of Business, Centerville, Iowa,

Interstate Power Co., Delaware, Principal Place of Business, Dubuque, Iowa,

Union Electric Power Co., Illinois, Principal Place of Business, St. Louis, Missouri,

Kansas City Power and Light Co., Missouri, Principal Place of Business, Kansas City, Missouri,

Iowa Electric Light and Power Co., Iowa, Principal Place of Business, Cedar Rapids, Iowa,

Northwest Light and Power Co., Delaware, Principal Place of Business, Cedar Rapids, Iowa,

Wisconsin Power and Light Co., Wisconsin, Principal Place of Business, Madison, Wisconsin,

Iowa Public Service Co., Iowa, Principal Place of Business, Sioux City, Iowa,

and that the defendant Iowa Utilities Association is an unincorporated, voluntary association organized, maintained, operated and controlled by and for the corporate defendants and is not organized under the laws of any state of the Union.

[fol. 24] 5. That all of said defendant corporations are engaged in the business of selling, transmitting, and distributing electric power and light in Iowa and are members of the Iowa Utilities Association, with its office in Des Moines, Iowa, within the Southern District of Iowa. That members of said Iowa Utilities Association engage in the sale and distribution of electric light and power in the states of Iowa, Wisconsin, Illinois and Missouri, including the Southern District of Iowa.

6. That the defendants herein are sued jointly and severally.

7. That since on or about June 10, 1938, the corporate defendants herein have controlled and now control approximately 90 percent of the business of the sale and distribution of electric light and power in the state of Iowa, Southwestern Wisconsin, Western Illinois, and Northeastern Missouri, and that said defendants have a virtual monopoly of said electric light and power business in the area last above described.

8. That the object and purpose of the plaintiffs in the organization of the First Iowa Hydro Electric Cooperative was the construction of dams, diversion channels, hydroelectric generating facilities, and transmission lines for the generation and distribution of electric power and light throughout the state of Iowa, Southwestern Wisconsin, Western Illinois, and Northeastern Missouri.

9. That the members of plaintiff association, as provided by the laws of the State of Iowa, conduct the business of the association through a Board of Directors, and said Board of Directors as provided by its Articles of In-[fol. 25] corporation conduct the business for the individuals forming said association.

10. That since the organization of the plaintiff First Iowa Hydro Electric Cooperative in 1938 the defendants conspired to monopolize, monopolized, and attempted to monopolize the generation, transmission, distribution, and sale of electric light and power, in the area above described, and have unlawfully contracted, combined, and conspired to restrain trade and commerce among the several states in the distribution of electric light and power. These unlawful conspiracies to monopolize, monopolies, attempts to monopolize, and contracts, combinations, and conspiracies to restrain interstate trade and commerce in electric light and power have been and are being consummated by the following means and methods, among others:

(a) Deliberate and continued attempts to prevent the issuance of a license to the plaintiff First Iowa Hydro Electric Cooperative for the construction, operation and maintenance of the project originally known as the Cedar River Dam and later as Federal Power Commission Project License No. 1853.

(b) The agreement during the year 1948 reciting in substance their unalterable opposition to the proposed hydro electric project on the Cedar River in Muscatine County, Iowa; their agreement to pool their resources to oppose the construction of said proposed project; and their further agreement that in the event said project should be built said defendants would not use any power from said generation facilities.

(c) By threatening banks, bankers, financial institutions, their officers, brokers and/or agents with boycott and loss of utility business on a national scale as well as the loss of future business from the members of the Iowa Utilities Association.

(d) Carrying said agreement and conspiracy into effect by applying various persuasions, influences, threats, and intimidations to banks and banking and financial institutions solicited, requested, approached, and contacted in behalf of plaintiffs to assist in financing said project and

thereby forcing and coercing said financial institutions to refuse to assist in the marketing of any securities to finance the cost of constructing said proposed project.

(e) And otherwise hampering, interfering with, obstructing and impeding the financing of said project by divers and sundry means, methods and practices, the precise nature of which are unknown to these plaintiffs, but which proved nevertheless effective in thwarting and preventing the plaintiffs from obtaining the necessary funds to construct said project.

(f) By various other unfair competitive practices designed to appropriate all of the electric light and power distribution in the areas in Iowa, Wisconsin, Illinois, and Missouri hereinbefore referred to, all of which were designed to prevent plaintiff and other possible competitors from engaging in the generation and distribution of electric light and power in the area last above referred to.

11. That the period of time covered by this complaint began on or about the middle of the year 1938 and con- [fol. 27] tinued through the years following, up to and including the date upon which this complaint is filed.

12. That plaintiffs have at all times since receiving their certificate to do business as an association made diligent effort to finance and construct said project, and they, together with various other individuals interested in the construction of said project and in the resulting generation, transmission, distribution and sale of electric light and power on reasonable terms in the territory adjacent thereto in the State of Iowa and adjoining states, began negotiations with various banks and financial institutions in New York City, Chicago, and elsewhere to arrange for the sale of bonds and other securities to pay for the cost of constructing said project. These plaintiffs further state that numerous engineers of national reputation, well and truly qualified, were employed to make and did make a full and complete investigation of said project and pronounced the same to be feasible, doable and economically sound.

13. That in carrying the aforesaid conspiracy and scheme into effect the defendants and each of them, acting through their officers and various agents, have by various threats intimidated, persuaded, influenced and forced the various banks, banking and financial institutions approached and/or contacted by the plaintiffs and their various officers and agents to refuse to assist in the marketing of any securities to finance the cost of constructing said proposed project.

14. That plaintiffs have made diligent effort continuously and at all times to finance said project, that the [fol. 28] same has been pronounced economically sound and feasible by numerous banking and financial institutions and approved by such institutions, but defendants' unfair competitive practices, unlawful activities within the market, and campaign of false and misleading propaganda, all executed as part of their conspiracy to prevent plaintiffs from constructing said proposed project, have served, as was intended by defendants, to prevent plaintiffs from obtaining the necessary financing at times when capital markets were favorable. Thus plaintiffs have been deprived of the opportunity to construct said project and to serve the public in the manner contemplated by plaintiffs and in the manner which the public and the business require.

15. That but for the threats, intimidation, coercion and other activities of defendants hereinbefore described the financial institutions above referred to would have willingly furnished the funds to pay the cost of said proposed project.

16. That each and all of the acts of defendants hereinbefore described were intended, conceived, and carried out for the purpose of, and in restraint of trade and commerce among the several states, and were in effect and in fact a combination and conspiracy in restraint of trade and commerce among the several states of the United States.

17. That the unlawful acts and things done, as recited in the paragraphs above, have caused and are causing great

and lasting and irreparable damage to the good will, the business, the property, the competitive position, and the future prospects of plaintiffs.

18. That by reason of the combination and conspiracy and the various acts done by defendants, their officers and their various agents and each of them, in pursuance thereof as hereinbefore stated, the plaintiffs have been damaged in the amount of $40,000,000.

[fol. 29] Wherefore, plaintiffs pray:

1. That summons issue directed to each and all of the defendants, as named in paragraph 4 above, commanding them to appear and to answer the allegations contained in this complaint and to abide by and perform such orders and decrees as this Honorable Court may in the premises make.

2. That during the course of this litigation, and at the conclusion of the trial for all time thereafter the defendants jointly, and each of them severally, be enjoined from doing any act or thing identical with, or in kind and character like unto the acts and things herein complained of, and that in particular the defendants be enjoined from all collective action relating to, and from any and all moves which directly or indirectly threaten to monopolize or to establish their dominion over electric light and power, and that such injunction be imposed upon the defendants and each of them and upon all their officers, directors, servants and employees, and upon all persons natural and corporate acting for or in concert with said defendants or any of them, or under their control, direction, permission or license.

3. That upon the conclusion of the trial the plaintiffs have and recover of and from the defendants, jointly and severally, the damages by plaintiffs sustained in the sum of $40,000,000 and that as commanded by the law said damage be trebled, amounting as so trebled to the total sum of $120,000,000.

4. That this Court allow to the plaintiffs and that the defendants, jointly and severally, be required to pay the full costs of the suit, and in addition thereto a reasonable fee for the services of plaintiffs' attorneys.

[fol. 30] 5. That the Iowa Utilities Associations be enjoined from operating as a combination, confederation and conspiracy in restraint of trade and commerce among the several states and from all activities designed to prevent new competitors from entering the field of electric power and light generation, transmission, and distribution.

6. And that the plaintiffs have such other, further, additional and different relief as the course of this action shows to be necessary and this Honorable Court may deem to be just and proper.

FRANCE, FRANCE & NADY,

JAMES D. FRANCE,

XAVIER C. NADY,
First National Bank Building,
Tipton, Iowa,

JAMES R. McMANUS,

ALLAN R. SHEPHERD,
417 Fleming Building,
Des Moines, Iowa,
Attorneys for Plaintiffs.

Haley, Doty & Schellenberg,
1101 Connecticut Avenue,
Washington, D. C.,
Of Counsel.

[fol. 31] Demand for Jury.

Plaintiffs pursuant to Rule 38 (b) of the Rules of Civil Procedure of the District Courts of the United States demand a trial by jury of all issues tendered by the above and foregoing complaint, except the issue whether or not plaintiffs are entitled to the equitable injunctive relief prayed.

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Attorneys for Plaintiffs.

[fol. 32] (Order of District Court appointing Special Master.)

(Filed in U. S. District Court on May 23, 1955.)

United States District Court
Southern District Of Iowa
Davenport Division

First Iowa Hydro Electric Cooperative, et al.,
Plaintiffs.
No. 1-224. vs. Civil Action.
Iowa-Illinois Gas and Electric Company, et al.,
Defendants.

It appearing from the record herein and from the statements of counsel that it is anticipated that the depositions the taking of which will be commenced at Davenport, Iowa, on June 6, 1955, as ordered, will involve the examination of the several parties plaintiff and the production of numerous documents, that the nine defendants other than movant, Union Electric Power Company, are privileged to examine those parties whose depositions are to be taken, and that it will expedite the taking of depositions and otherwise will be in the interest of justice to appoint a Special Master in connection therewith;

I. It Is Ordered that Wayne G. Cook of Davenport, Iowa, be and is appointed as Special Master in this action in connection with the taking of the discovery depositions of parties plaintiff and the depositions of other parties, with the following powers:

1. To supervise the conduct of the taking of said depositions, including the length thereof;

2. To rule on any objections to questions, which objections, pursuant to Rule 32(c) of the Rules of Civil Procedure, must be made, if at all, during the taking of the depositions;

3. To rule upon all applications for relief available to and which may be made by any party, during or in connec-

tion with the said depositions under Rules 26 through Rule 37(a), and Rule 45(a) through (d) of the Federal Rules of Civil Procedure;

4. Such other powers as the court may by order later prescribe.

[fol. 33] II. It Is Further Ordered that any action taken or ruling made shall be subject to review by the undersigned judge of this court, or any judge sitting by assignment herein, upon the application of any party.

III. It Is Further Ordered that by reason of the appointment presently of a Commissioner to take such depositions, the presence of said Special Master shall not be continuously required at the taking thereof, but that he shall attend as may be necessary to rule upon such matters as may arise under Paragraphs I—1, 2 and 3 hereof, as from time to time, in his judgment, may appear necessary to promote and expedite the taking of the depositions. This shall not prevent, with the consent of the parties interested therein, the certification to the Special Master of any question requiring his ruling.

IV. It Is Further Ordered that the compensation to be allowed to the Special Master shall be paid by the defendant Union Electric Power Company and the other defendants participating in the taking of said depositions.

V. It Is Further Ordered that any objections by any party to the appointment of said Special Master shall be made in writing and filed with the Clerk of this Court at Des Moines, Iowa, on or before June 2, 1955.

Signed at Des Moines, Iowa, this 23rd day of May, 1955.

WM. F. RILEY,
United States District Judge.

Notice to Attys. 5/23/55

Ent. 2-OJ-558

[fol. 34] (Memorandum Order of District Court denying Motion of Plaintiffs to assess Attorney Fees.)

(Filed in U. S. District Court on June 4, 1955.)

In this matter there has been submitted a motion of plaintiffs to assess upon defendant Union Electric Power Company the expense of plaintiff's attorneys incident to their attendance at the taking of the deposition of plaintiff Harry J. Strong, under Rule 26, and scheduled to commence at Davenport, Iowa, on June 6, 1955, pursuant to the order entered herein on May 16, 1955.

Written statements of counsel for the parties in support of and in opposition to the motion have been filed pursuant to order of court, and the court has given due consideration thereto. It is to be remembered that this action was instituted by the plaintiffs and the venue was laid in the Davenport Division. When the action was commenced defendants, in accordance with the Federal Rules of Civil Procedure, were accorded the right of discovery depositions. They have elected to have such depositions of the plaintiffs taken at Davenport, Iowa, which is the residence of Mr. Harry J. Strong, whose deposition will be first taken. The expense of procuring available space for the taking, of providing reporters to take and transcribe the depositions, and the expense of a Special Master named by the court to serve in connection with the taking of these depositions, is all to be borne by the defendant Union Electric Power Company and such other defendants as may participate. Despite the authority conferred by Rule 30(b) of the Federal Rules of Civil Procedure, to permit the court to make any order "which justice requires," the court believes that it is not within the contemplation of the Rule that an allowance [fol. 35] of expenses sought by plaintiffs in their motion should be assessed to defendant, and that the defendant should have a right to proceed without being burdened with this additional expense. The nature of the depositions to be taken and the effective and expeditious prosecution of this inquiry, in the opinion of the court, require the depositions to be taken orally and not by written interrogatories. The court has accordingly so ordered the taking.

The Clerk will enter the following:

Order

Upon consideration of plaintiffs' motion to require defendant Union Electric Power Company to pay the expenses and fees of the plaintiffs' attorneys in respect to the depositions of the plaintiffs as presently scheduled to be taken at Davenport, Iowa, and after due consideration of the written statements filed by the parties in support of and in opposition thereto, the court finds that the motion should be denied; and

It is Therefore Ordered that plaintiffs' motion to allow expense of taking depositions shall be and is hereby denied. An exception is granted.

Signed at Des Moines, Iowa, this 4th day of June, 1955.

WM. F. RILEY,
United States District Judge.

[fol. 36] (Order of District Court relating to Discovery Deposition of Harry J. Strong)

(Filed in U. S. District Court on July 30, 1955)

In this action the discovery deposition of Harry J. Strong is in progress at Davenport, Iowa, having continued with adjournments since June 6, 1955.

The court has had occasion to examine considerable portions of the transcript of the deposition because of plaintiffs' motion to vacate order of appointment of the Special Master and to quash certain portions of the discovery deposition, heard at Des Moines, Iowa, on July 21, 1955. The court has also had a conference with counsel for the plaintiffs and the defendant Union Electric Power Company, conducting the examination of witness Harry J. Strong.

The court is advised that copies of the transcript of the discovery deposition are made and furnished daily by the Commissioner to counsel for the plaintiffs and for each de-

fendant and to the Special Master. The court is conscious of the practical problem which this fact creates in making effective the order herein to be made but because of its confident belief in the willingness and ability of counsel to do so by their good faith cooperation, is unready to impose restrictions upon the continued delivery to counsel by the Commissioner of copies of the daily transcript.

After due consideration, for good cause appearing to the court and on the court's own motion, the Clerk is directed to enter the following

Order

The court sua sponte, for good cause, finds; and

[fol. 37] It Is Ordered—

1. The original transcript of the discovery deposition of Harry J. Strong, commenced in this action on June 6, 1955, and being continued at Davenport, Iowa, shall be filed with the Commissioner (who for that purpose may utilize the facilities of the office of the Clerk of this Court) and held by the Commissioner until signed and certified as provided by the Federal Rules of Civil Procedure, when it shall be sealed and filed with the Clerk and opened only by order of the court.

2. The distribution of copies of the transcript may be made to counsel of record and to the Special Master only, but no copy of such copies, or any parts thereof, shall be made or used by any counsel or party.

3. The Commissioner at all times shall permit examination of the transcript by counsel of record and the Special Master only, and all counsel and parties are directed to effectuate the purposes and preserve the integrity of this order by their use of their daily copy of the transcript in manner appropriate to that end.

Signed at Des Moines, Iowa, this 30th day of July, 1955.

WM. F. RILEY,
United States District Judge.

[fol. 38] (Notice of entry of Appearance of Robert M. Bell and Bell, Farrar & Scott as Attorneys for Plaintiffs.)

(Filed in U. S. District Court on August 29, 1955.)

Now comes Bell, Farrar & Scott, and enter their appearance in the above entitled cause as associate attorneys for First Iowa Hydro Electric Cooperative, F. A. E. Gillmor, Carl J. Mitzner, Harry J. Strong, Harry Imel, and P. H. Naber.

We further request that all other copies of Notice of Hearing be sent to said attorneys at the address as shown below.

ROBERT M. BELL,
BELL, FARRAR & SCOTT,
Attorneys for Plaintiff.

BELL, FARRAR & SCOTT
Attorneys at Law
303 Safety Building
Rock Island, Illinois

[fol. 39] Motion to Quash Appearance.

(Filed in U. S. District Court on August 31, 1955.)

Come now the undersigned, appearing as officers of this court and as the attorneys of record for plaintiffs in this cause since it was docketed on February 18, 1954, and move to quash the purported appearance which was filed in this cause in the office of the clerk of this court on or about the 29th day of August, 1955, by Bell, Farrar and Scott, Attorneys at Law, Rock Island, Illinois, wherein they purport to enter an appearance for and in behalf of the plaintiffs in the above entitled cause, for each of the following grounds.

1. The firm of Bell, Farrar and Scott is not personally known to any of the attorneys of record for plaintiffs in this cause and none of the undersigned have ever seen or talked with any member of said firm.

2. The undersigned have not requested plaintiffs to provide or furnish other counsel or legal assistance in this cause to date.

3. The plaintiffs have not discussed with the undersigned the [advisibility] or necessity of employing other counsel in this cause and the appearance filed by Bell, Farrar and Scott was without the knowledge, consent or prior invitation of the undersigned.

4. That after a great deal of research and investigation by the undersigned, the complaint in this suit was filed and docketed February 18, 1954. Since then, the undersigned have spent the major portion of their time in giving attention to the prosecution of this cause, including research, briefing, preparation of pleadings, court appearances and prolonged discovery deposition proceedings, involving a great deal of work, research, experience, skill and ability.

5. That the principal asset of the First Iowa Hydro Electric Cooperative consists of a permit or license to build [fol. 40] what is commonly known and referred to as the "Moscow Dam", which permit or license was issued to it in September, 1948, by the Federal Power Commission, Washington, D. C.

6. That the cooperative is indebted at this time in the approximate amount of $1,300,000. There is not and will not be any possible source of funds available for the purpose of compensating the undersigned for their services in this litigation unless there is a successful outcome of the suit. Compensation for the efforts of the undersigned, therefore, depends entirely on the results accomplished in this lawsuit, as there are not sufficient assets or funds available for that purpose.

7. That the firm of Bell, Farrar and Scott do not appear in this litigation at the request of the undersigned or in association with the undersigned, and the undersigned are all of the lawyers who appeared of record for the plaintiffs prior to the filing of the purported entry of appearance by Bell, Farrar and Scott heretofore mentioned. The firm of Bell, Farrar and Scott and the individual members thereof are all residents of Rock Island, Illinois and are non-residents of Iowa.

8. That the undersigned protest and object to the unwarranted attempted intrusion of said attorneys into this lawsuit which was brought February 18, 1954, for each and all of the reasons heretofore given. The undersigned have had no choice in the selection of such firm as associate counsel and have had no consultation with them and did not know they were going to file their appearance in this cause until they did so and have had no correspondence with them or any communication of any kind from them prior to the time such purported appearance was filed.

9. That attached hereto and marked Exhibit "A" is a letter received by X. C. Nady, one of the undersigned, on August 26, 1955 through the United States mail, which was the first knowledge or information that the undersigned had of the intention of said firm to attempt to enter said appearance in this cause. No other communication has been received by any of the undersigned from Bell, Farrar and Scott.

10. That no application has been filed in this cause by anyone to this date, so far as is known to the undersigned, seeking permission for the attorneys mentioned to appear in this lawsuit and no order has been made granting such right to said attorneys.

[fol. 41] 11. The undersigned respectfully requests that the foregoing motion be set down for hearing, as soon as the convenience of the court will permit, and that upon the presentation thereof to the court an order issues for a rule to show cause by the law firm of Bell, Farrar and Scott of Rock Island, Illinois, as to why said motion should not be sustained.

JAMES D. FRANCE,

X. C. NADY,
1st National Bank Building,
Tipton, Iowa.

J. R. McMANUS,

A. R. SHEPHERD,
417 Fleming Building,
Des Moines, Iowa.

State of Iowa,
Polk County—ss.

We, the undersigned, being first duly sworn on oath depose and say that we are two of the attorneys of record in the above entitled cause whose names are signed to the foregoing motion, that we have collaborated in the preparation of the motion, that we know that facts set forth therein and the allegations therein contained are true as we, and each of us, verily believes.

X. C. NADY,

J. R. McMANUS.

Subscribed and sworn to before me by the said X. C. Nady and J. R. McManus on this 31 day of August, 1955.

(Notarial Seal)

GERALDIN DeMARCO,
Notary Public in and for
Polk County, Iowa.

[fol. 42] Exhibit "A."

Law Office of
Bell, Farrar & Scott
Suite 303 Safety Building
Rock Island, Illinois

Benjamin S. Bell (1934-1950)
Benj. D. Farrar
Earl L. Scott
Robert M. Bell
Robert G. Scott
John A. Bell

Office at
Erie, Illinois

August 25, 1955

Mr. X. C. Nady
Attorney at Law
Tipton, Iowa

Dear Mr. Nady:

In re: First Iowa Hydro Electric Cooperative, Et Al, Plaintiffs, —vs— Iowa-Illinois Gas and Electric Co., Et Al., Defendants.

We have been engaged by the plaintiffs in the above case to assist in representing them in the case now pending in

the Federal Court in Davenport, Iowa. We are today filing our Entry of Appearance and notifying all defendants' attorneys of our position.

After talking with Mr. Strong and Mr. Gilmore, we have not been able to determine your position. We would like very much to meet with you at your convenience, prior to the 6th of September, so that we can become acquainted and plan the work in the coming depositions.

Very truly yours,

BELL, FARRAR & SCOTT,
By Robert M. Bell

RMB:nlm

[fol. 43] Petition To Intervene On Rule To Show Cause On The Motion Of Attorneys France, France & Nady and J. R. McManus and Allan H. Shepherd To Quash The Entry Of Appearance Of The Law Firm Of Bell, Farrar & Scott.

(Filed in U. S. District Court on September 2, 1955.)

The United States District Court
Southern District Of Iowa
Davenport Division

First Iowa Hydro Electric Cooperative, et al,
Plaintiffs,
No. 1-224 vs. Civil
Iowa-Illinois Gas and Electric Company, et al,
Defendants.

Now comes Harry J. Strong, Harry Imel and Frank A. E. Gillmor, P. H. Naber, individually as plaintiffs in this action and as representatives of all other individual plaintiffs and also as members constituting a quorum of the Board of Directors of First Iowa Hydro Electric Cooperative and state unto the Court as follows:

1. Frank A. E. Gillmor is President of the First Iowa Hydro Electric Cooperative and also a member of the Board of Directors of said Cooperative.

2. Harry J. Strong is Secretary-Treasurer of said Cooperative and also a member of the Board of Directors of said Cooperative.

[fol. 44] 3. Harry Imel is a member of the Board of Directors of said Cooperative, and P. H. Naber is a member of the Board of Directors of said Cooperative.

4. That said Cooperative originally hired the firm of France, France and Nady of Tipton, Iowa as counsel for the Cooperative in the prosecution of the subject case; that said cooperative hired the law firm of James R. McManus and Allan R. Shepherd to assist the law firm of France, France & Nady in the prosecution of said case; that the only contract that exists between First Iowa Hydro Electric Cooperative and the law firms of France, France, & Nady and Allan R. Shepherd & James R. McManus, are copies of resolutions passed by the Board of Directors of the First Iowa Hydro Electric Cooperative.

5. That no members of the First Iowa Hydro Electric Cooperative ever entered into any contract other than the contract between the Cooperative, or the Cooperative's action and said attorneys.

6. That the terms of the contract of said employment of said attorneys as outlined in the minutes of the meeting of the Board of Directors of First Iowa Hydro Electric Cooperative, which minutes were furnished to said attorneys, is the following terms of employment: "That the fee for such work as done by said attorneys shall be as that allowed by the Court as provided by law, or should the law suit be settled out of Court, the fees shall be on a quantum merit basis as recommended by our general counsel, Mr. Jake More."; that it was further understood by First Iowa Hydro Electric Cooperative that First Iowa Hydro Electric Cooperative would be liable for Court costs and "out of pocket" expense.

[fol. 45] 7. That since the initiation of said action, First Iowa Hydro Electric Cooperative has forwarded to said attorneys, suins in excess of Five Thousand Dollars

($5,000.) and has covered hotel travel and meal expenses of said attorneys over and above the said sum forwarded.

8. That since the 30th day of July, A.D., 1955, the law firms of France, France & Nady and J. R. McManus and Allan R. Shepherd have refused to perform any actions in furtherance of this cause of action unless a payment of Five Thousand Dollars ($5,000.) was made to the law firm of France, France & Nady and a like payment of Five Thousand Dollars ($5,000.) to the law firm of James R. McManus and Allan R. Shepherd.

9. That said demand for the sum of Ten Thousand Dollars ($10,000.) as above stated was contrary to the terms of employment of said attorneys.

10. That because of the refusal of the attorneys to perform acts necessary in the furtherance of said law suit, it became necessary for your petitioners in this petition to discuss help with other attorneys; that discussions were had with the law firm of Bell, Farrar & Scott of Rock Island, Illinois, and your petitioners were informed by Bell, Farrar & Scott of Rock Island, Illinois that they would enter the case if it were agreeable with the attorneys of record.

11. That an Entry of Appearance of the law firm of Bell, Farrar & Scott was discussed with the attorneys of record and a meeting was set up whereby the law firm of Bell, Farrar & Scott was to confer with X. C. Nady in the law offices of France, France & Nady in Tipton, Iowa on the 16th day of August, A.D., 1955 at 10:00 o'clock A.M.; that for reasons unknown to your petitioners or to the law [fol. 46] firm of Bell, Farrar & Scott, on the 15th day of August, A.D., 1955, X. C. Nady cancelled said meeting.

12. That First Iowa Hydro Electric Cooperative has been informed by the law firms of France, France & Nady, by and through, X. C. Nady, and the law firm of James R. McManus and Allan R. Shepherd, by and through James R. McManus that said law firms would work with and cooperate with the additional counsel of Bell, Farrar & Scott.

13. That upon this assurance, on the 24th day of August, A.D., 1955, the law firm of Bell, Farrar & Scott mailed

an entry of appearance to the parties defendant with a copy of said appearance to the chief counsel for First Iowa Hydro Electric Cooperative, Mr. X. C. Nady.

14. That Mr. James R. McManus, after the 24th day of August, 1955, made a trip to Chicago, Illinois where he talked to bankers and engineers and attempted to get them to withdraw their support of First Iowa Hydro Electric Cooperative.

15. That repeatedly since the filing of this suit, the law firms of France, France & Nady and James R. McManus and Allan R. Shepherd have stated that the strategy of the opposition was to break First Iowa Hydro Electric Cooperative of funds to continue said law suit; that the demands for Ten Thousand Dollars ($10,000.) by said attorneys, is, in the minds of the directors of First Iowa Hydro Electric Cooperative, a furtherance of the strategy of the defendants of this action.

16. That as of this date First Iowa Hydro Electric Cooperative and each individual plaintiff, has completely lost faith in the ethics and honesty and the attorney-client relationship as exists between First Iowa Hydro Electric Cooperative and the law firms of France, France & Nady and James R. McManus and Allan R. Shepherd.

[fol. 47] 17. That the law firms of France, France & Nady and James R. McManus and Allan R. Shepherd have stated to the full Board of Directors of First Iowa Hydro Electric Cooperative that a greater interest is owned in this law suit by the attorneys of record, namely France, France & Nady and James R. McManus and Allan R. Shepherd, than is owned by any of the clients of this action.

18. That attorney, James R. McManus, in the Mississippi Hotel in Davenport, Iowa, on the 13 day of July, A.D., 1955 punched the General Manager and Secretary-Treasurer of First Iowa Hydro Electric Cooperative in the face causing him to lose over a quart of blood and kicking him when he was down.

19. That upon numerous occasions the law firms of France, France & Nady and James R. McManus and Allan

R. Shepherd have stated that their rate of compensation was to be merely quantum merit based upon successful prosecution of said case; that at no time has any contract or any offer been made by any action of First Iowa Hydro Electric Cooperative giving to said attorneys any percentage of said law suit.

20. That the law firm of France, France & Nady and the law firm of James R. McManus and Allan R. Shepherd have now stated to the Board of Directors of First Iowa Hydro Electric Cooperative and to the individual plaintiffs that they will not work with any other attorneys; that they own an interest in this law suit; that no one can fire them from this law suit and that it is impossible for the client to retain any other counsel to protect their interests.

21. That the law firm of Bell, Farrar & Scott has stated to the plaintiff in this action, First Iowa Hydro Electric Cooperative, and the individual plaintiffs, that they could [fol. 48] only enter this cause or law suit and help the individual plaintiffs and First Iowa Hydro Electric Cooperative upon cooperation of the previous [consel]; second, the withdrawal of the previous counsel, or third—if First Iowa Hydro Electric Cooperative would be without counsel and be in a position to hire the law firm of Bell, Farrar & Scott; that the law firm of Bell, Farrar & Scott has informed First Iowa Hydro Electric Cooperative and the individual plaintiffs that it would be necessary for them to withdraw their notice of appearance unless and until one of the three contingencies above stated were met.

22. That the action of the law firms of France, France & Nady and James R. McManus and Allan R. Shepherd in their Rule to Show Cause on the Motion to Quash the Entry of Appearance of the law firm of Bell, Farrar & Scott is an unethical action whereby said attorneys are attempting to compel the plaintiffs in this action to proceed to further hearings with counsel in which they have completely lost faith and counsel they feel are not working in the best interests of the clients; that it has been reported to the petitioners that counsel for the defendants in this action have stated that the law firms of France, France & Nady and James R. McManus and Allan R. Shepherd are "under

the thumbs'' of counsel for the defendants, and these reported tales have increased the loss of faith of the plaintiffs in this action, in the attorney relationship of the firms of France, France & Nady and James R. McManus and Allan R. Shepherd.

23. That on Order of this Court, discovery depositions are to resume on Tuesday Morning, September 6, 1955 at Davenport, Iowa; and that at that time it will be impossible for the defendant, Harry J. Strong, to testify or for First Iowa Hydro Electric Cooperative to allow him to testify if the attorneys France, France & Nady, James R. McManus and Allan R. Shepherd are present for the plaintiffs in this action have completely lost faith in such attorneys.

[fol. 49] 24. That because of this Motion to Quash, the plaintiffs in this action are now without attorneys because the law firm of Bell, Farrar & Scott is not in a position to protect the interests of the clients for they have not been afforded the consultations which are necessary when new attorneys enter a cause of action of this nature.

25. That the rights of plaintiffs in this action will be materially impaired unless this Court postpones the starting of the said depositions until such time as a full hearing can be had on the complete allegations of this Complaint and until such time as your petitioners can retain legal counsel to represent them in said hearing.

26. That the first notice of said hearing now before the Court was received by your petitioners on the afternoon of September 1, 1955 and that it has been impossible for your petitioners to do anything but rush this petition to the Court that their plight might be known to the Court. That because of the seriousness of your petitioners' petition, your petitioners respectfully request that the Iowa Bar Association be notified of these proceedings and be made a party to these proceedings.

27. That your petitioners respectfully request of the Court that a hearing on this matter be set on a day certain that all parties may be adequately prepared to more fully present their evidence and petitions.

28. It is further stated that your petitioners, as members of the Board of Directors of the First Iowa Hydro Electric Cooperative, attended a meeting whereby the law firms of France, France & Nady and James R. McManus and Allan R. Shepherd were discharged as attorneys of record for First Iowa Hydro Electric Cooperative in Civil [fol. 50] suit No. 1-224 that the resolution of the First Iowa Hydro Electric Cooperative was as follows: "That the law firm of James R. McManus and Allan R. Shepherd, 417 Fleming Building, Des Moines, Iowa and the law firm of France, France & Nady, Tipton, Iowa are hereby and henceforth discharged as attorneys of record for First Iowa Hydro Electric Cooperative in Civil suit 1-224 in Southern District of Iowa, Davenport, Division of United States District Court."; that because of said resolution of the Board of Directors of First Iowa Hydro Electric Cooperative, the law firms of France, France & Nady and James R. McManus and Allan R. Shepherd are today in the status of attorneys with no clients and therefore have no status in this Court at this time; that there is no action filed in the name of France, France & Nady and James R. McManus and Allan R. Shepherd and they have no interest which will now allow them to substitute as plaintiffs which might allow them to bring any action in Civil action No. 1-224 before this Court; that the only remedy open to the law firms of France, France & Nady and James R. McManus and Allan R. Shepherd, because of the resolution aforesaid of the Board of Directors of First Iowa Hydro Electric Cooperative is a civil action for work and labor performed, and their attempt to use the Courts in the manner in which they are at present, is an abuse of the form and abuse of the remedy.

29. That unless the Court grants this petition to intervene and set forth all the facts in this petition and allows adequate time to prepare the evidence, your petitioners will be denied their rights to prosecute a cause of action in the Courts of the United States in accordance with the Constitution of the United States.

30. That at no time has any notice ever been forwarded to any of the plaintiffs of this action of the present acts

of the law firms of France, France & Nady and James R. [fol. 51] McManus and Allan R. Shepherd before this Court; and in fact, the only communication received by plaintiffs of the original action was a telephone call after five o'clock P. M. on the 1st day of September, A.D., 1955 by the law firm of Bell, Farrar & Scott wherein the law firm of Bell, Farrar & Scott stated they were being cited unto the Court,

Wherefore, your petitioners pray:

1.—That they be permitted to intervene in the matter before the Court at this time.

2.—That a full hearing be had on the matter before the Court at this time upon adequate notice to all parties concerned.

3.—That each and every plaintiff in this action be notified of said hearing.

4.—That the Iowa Bar Association be notified of said hearing.

5.—That a postponement be had in the discovery depositions of Harry J. Strong until the Court has finally disposed of all matters in said hearing.

6.—That the attorneys France, France & Nady and James R. McManus and Allan R. Shepherd [by.] cited before this Court for their action in betraying the attorney client relationship in this matter.

7.—That France, France & Nady and James R. McManus and Allan R. Shepherd be stricken from the records as attorneys of record in Civil action No. 1-224 before this Court.

8.—That time and leave be granted to petitioners to prepare a more complete petition which will more fully set out the many acts committed against the best interest of the clients, committed by the law firms of France, France & Nady and James R. McManus and Allan R. Shepherd.

[fol. 52] 9.—That attorneys France, France & Nady and James R. McManus and Allan R. Shepherd's Motion to

Quash the Entry of Appearance of the law firm of Bell, Farrar & Scott be denied.

And for such other and further relief as to the Court May seem Meet.

HARRY J. STRONG,
HARRY IMEL,
FRANK A. E. GILLMOR,
P. H. NABER.

State of Iowa,
County of Polk—ss.:

Harry J. Strong, Harry Imel, Frank A. E. Gillmor and P. H. Naber, being first duly sworn on oath, state that they have read the foregoing petition by them subscribed and that the matters and things contained therein stated are true to the best of their knowledge and belief.

HARRY J. STRONG,
HARRY IMEL,
FRANK A. E. GILLMOR,
P. H. NABER.

Subscribed and sworn to before me this 2nd day of September, A.D., 1955.

(Notary Seal)

MARY F. HOLSTAD,
Notary Public in and for Polk County, Iowa.
My Commission Expires July 4, 1957.

[fol. 53] (Motion of Bell, Farrar & Scott to withdraw their Appearance as Attorneys for Plaintiffs)

(Filed in U. S. District Court on September 2, 1955)

Now comes Bell, Farrar & Scott, attorneys, and move this Court to withdraw their appearance as attorneys for the plaintiffs in the above-entitled cause and ask that an order be so entered.

By John A. Bell.

BELL, FARRAR & SCOTT
Attorneys at Law
304 Safety Building
Rock Island, Illinois.

[fol. 54] (Order of District Court on withdrawal of Appearance of Bell, Farrar & Scott)

(Filed in U. S. District Court on September 6, 1955)

The filing herein at the hearing on 2 September 1955, for Bell, Farrar & Scott by John A. Bell, of a withdrawal of appearance as attorneys for plaintiffs having effected such withdrawal, the matters raised by the motion to quash appearance require no consideration by the court.

For the same and other reasons, the instrument entitled "Petition to Intervene,' etc., tendered by plaintiffs is not to be filed nor to be a part of the record herein. The statement to plaintiff Strong at the hearing on 2 September 1955, that its contents would be considered was made prior to the filing by John A. Bell of the withdrawal of appearance of Bell, Farrar & Scott, the filing of which left nothing before the court for hearing and determination, and made the so-called "Petition to Intervene," redundant and immaterial. For other good cause appearing to the court additional to the foregoing, it is not to be accepted for filing, or if for any reason regarded as filed, it is stricken in toto on the court's own initiative.

It Is Therefore Ordered that the withdrawal of appearance of Bell, Farrar & Scott is recognized and accepted, that in consequence the motion to quash appearance requires no consideration, and that the instrument denominated "Petition to Intervene," etc., on behalf of certain plaintiffs tendered to be filed shall not be filed nor shall be a part of the files or record herein.

Signed at Des Moines, Iowa, this 6th day of September, 1955.

WM. F. RILEY,
United States District Judge.

[fol. 55] Motion for Leave to Remove France, France & Nady and James R. McManus and Allan R. Shepherd as Attorneys for Plaintiffs Herein.

(Filed in U. S. District Court on September 16, 1955.)

Now comes First Iowa Hydro Electric Cooperative, a corporation, Harry J. Strong, Harry Imel, Frank A. E.

Gillmor, P. H. Naber and Carl J. Mitzner, Individual plaintiffs in this action, the individual plaintiffs being all the members of the Board of Directors of First Iowa Hydro Electric Cooperative, the corporate plaintiff, and state unto the Court as follows:

1. That First Iowa Hydro Electric Cooperative is a corporation organized under, and existing by virtue of the laws of Iowa, and maintaining its principal office at Muscatine, Iowa.

2. That Frank A. E. Gillmor is President of the First Iowa Hydro Electric Cooperative and also a member of the Board of Directors of said Cooperative.

3. That Carl J. Mitzner is Vice President of the First Iowa Hydro Electric Cooperative and also a member of the Board of Directors of said Cooperative.

4. That Harry J. Strong is Secretary-Treasurer of said Cooperative and also a member of the Board of Directors of said Cooperative.

[fol. 56] 5. That Harry Imel is a member of the Board of Directors of said Cooperative.

6. That P. H. Naber is a member of the Board of Directors of said Cooperative.

7. That France, France & Nady, James R. McManus and Allan R. Shepherd are attorneys for the plaintiffs and because of their conduct it has been impossible for the plaintiffs in this action to hire additional attorneys properly qualified to represent them before this Court, and it is necessary for the plaintiffs to make this appearance in their own behalf unrepresented by counsel to preserve their right to counsel acceptable to the plaintiffs, their present counsel being unacceptable.

8. That the corporate plaintiff employed the firm of France, France & Nady of Tipton, Iowa as counsel for itself and for the individual plaintiffs as counsel in this case; that said cooperative hired the law firm of James R. McManus and Allan R. Shepherd to assist the law firm of France, France & Nady in the prosecution of said case.

9. That said attorneys were employed on the basis outlined in the minutes of the Board of Directors of First Iowa Hydro Electric Cooperative, which minutes were furnished to said attorneys, namely: "That the fee for such work as done by said attorneys shall be as that allowed by the Court as provided by law, or should the law suit be settled out of Court, the fees shall be on a quantum merit basis as recommended by our general counsel, Mr. Jake More."; that it was further understood by the plaintiffs that First Iowa Hydro Electric Cooperative would be liable for Court costs, and "out of pocket" expense of said attorneys.

[fol. 57] 10. That since the initiation of said action, First Iowa Hydro Electric Cooperative has forwarded to said attorneys, sums in excess of Five Thousand Dollars ($5,000.) and has paid hotel, travel and meal expenses of said attorneys over and above the said sum forwarded.

11. That repeatedly aforesaid attorneys have made demands for money over and above expenses such as the demand of J. R. McManus of April 30, 1955 which stated as follows: "Confirming our previous conversation, I beg to advise that it will be out of the question for me to come to Davenport for the depositions unless a minimum sum of Fifteen Hundred Dollars ($1500.00) is paid to me in advance here in Des Moines."

12. That since the 30th day of July, A. D. 1955, the law firms of France, France & Nady and J. R. McManus and Allan R. Shepherd have refused to perform any actions in furtherance of this cause of action unless a payment of Five Thousand Dollars ($5000.) was made to the law firm of France, France & Nady and a like payment of Five Thousand Dollars ($5,000.) to the law firm of James R. McManus and Allan R. Shepherd.

13. That said demand for the sum of Ten Thousand Dollars ($10,000.) as above stated was contrary to the terms of employment of said attorneys.

14. That said attorneys have consistently refused to carry out the orders of the Board of Directors of First Iowa Hydro Electric Cooperative.

15. That said attorneys have refused to associate with attorneys that have the confidence of the plaintiffs, thus precluding plaintiffs from being represented by counsel of their choice.

[fol. 58] 16. That Mr. James R. McManus, after the 24th day of August, 1955, made a trip to Chicago, Illinois where he talked to bankers and engineers and attempted to get them to withdraw their support of First Iowa Hydro Electric Cooperative.

17. That repeatedly since the filing of this suit, the law firms of France, France & Nady and James R. McManus and Allan R. Shepherd have stated that the strategy of the opposition was to break plaintiffs of funds to continue said law suit; that the demands for Ten Thousand Dollars ($10,000.) by said attorneys, is, in the minds of the plaintiffs, a furtherance of the strategy of the defendants of this action, and plaintiffs fear that said result may ensue unless they are permitted to change counsel.

18. That First Iowa Hydro Electric Cooperative and each individual plaintiff, have completely lost faith in their said attorneys to the extent that there is a complete lack of harmony in their relationship, thus imperiling the prosecution of this law suit.

19. That the law firms of France, France & Nady and James R. McManus and Allan R. Shepherd have stated to the full Board of Directors of First Iowa Hydro Electric Cooperative that a greater interest is owned in this law suit by the attorneys of record, namely France, France & Nady and James R. McManus and Allan R. Shepherd, than is owned by any of the clients of this action, thus endeavoring to appropriate this cause of action unto themselves, regardless of the rights and welfare of the plaintiffs.

20. That attorney, James R. McManus, in the Mississippi Hotel in Davenport, Iowa, on the 13th day of July, A. D. 1955, perpetrated a physical assault upon the person of the General Manager and Secretary-Treasurer of First Iowa Hydro Electric Cooperative causing him serious physical injury.

[fol. 59] 21. That upon numerous occasions the law firms of France, France & Nady and James R. McManus and Allan R. Shepherd have stated that their rate of compensation was to be merely quantum merit based upon successful prosecution of said case; that at no time has any contract or any offer been made by any plaintiffs giving to said attorneys any percentage of said law suit, or any right of propriety therein, the cause of action belonging to the plaintiffs.

22. That the law firm of France, France & Nady and the law firm of James R. McManus and Allan R. Shepherd have informed the Board of Directors of First Iowa Hydro Electric Cooperative and the individual plaintiffs that they will not work with any other attorneys; that they own an interest in this law suit; that no one can fire them from this law suit and that it is impossible for the clients to retain any other counsel to protect their interests. Because of their conduct it has become impossible for plaintiffs to engage other counsel.

23. That the action of the law firms of France, France & Nady and James R. McManus and Allan R. Shepherd in their Rule to Show Cause on the Motion to Quash the Entry of Appearance of the law firm of Bell, Farrar & Scott was an unethical action whereby said attorneys were attempting to compel the plaintiffs in this action to proceed to further hearings with counsel in which they have completely lost faith and counsel they feel are not working in the best interests of the clients.

24. It is further stated that the individual plaintiffs, as members of the Board of Directors of the First Iowa Hydro Electric Cooperative, attended a meeting at which the law firms of France, France & Nady and James R. McManus and Allan R. Shepherd were discharged as attorneys of [fol. 60] record for the plaintiffs in this case; and oral notice thereof was given to said attorneys on September 2, 1955; that the resolution of the First Iowa Hydro Electric Cooperative Board of Directors is as follows: "That the law firm of James R. McManus and Allan R. Shepherd, 417 Fleming Building, Des Moines, Iowa and the law firm of France, France & Nady, Tipton, Iowa are hereby and hence-

forth discharged as attorneys of record for First Iowa Hydro Electric Cooperative in Civil suit 1-224 in Southern District of Iowa, Davenport Division of the United States District Court."; that because of said resolution of the Board of Directors of First Iowa Hydro Electric Cooperative, the law firms of France, France & Nady and James R. McManus and Allan R. Shepherd are today in the status of attorneys with no clients and therefore have no standing in this Court at this time; that there is no action filed in the name of France, France & Nady and James R. McManus and Allan R. Shepherd and they have no interest which will now allow them to substitute as plaintiffs which might permit them to bring any action in Civil action No. 1-224 before this Court.

25. That in Civil suit 1-224 the plaintiffs' attorneys' fees become a charge against the defendants, upon successful conclusion of the suit, and the Court by law has a duty to assess such fees as may be reasonable and proper; that the question of the value of the attorneys' fees of the firms of France, France & Nady and James R. McManus and Allan R. Shepherd can only be determined by the Court upon a hearing properly set with defendant's attorneys present, and this question is a question reserved until after completion of the trial.

26. That in equity and good conscience the plaintiff [fol. 61] can only proceed with a fair trial when the law firms of France, France & Nady and James R. McManus and Allan R. Shepherd are no longer attorneys of record, and the question of attorneys' fees for the aforesaid attorneys is reserved until completion of the trial.

27. That because this motion is based on certain facts as well as to the law in relation to attorney and client, and although the facts of this motion are under oath, your movants request that in the event the facts recited herein should be denied by said attorneys, oral testimony should be heard by the Court to determine all questions of fact.

[fol. 62] Wherefore, your petitioners pray:

1.—That France, France & Nady and James R. McManus and Allan R. Shepherd be stricken from the records

as attorneys of record in Civil Action No. 1-224 before this Court.

2.—That the question of attorney fees for attorneys France, France & Nady and James R. McManus and Allan R. Shepherd be reserved until conclusion of this law suit.

3.—That on any question of fact that oral testimony be taken to determine any question of fact.

And for such other and further relief as to Court may seem meet.

HARRY J. STRONG,
HARRY IMEL,
FRANK A. E. GILLMOR,
P. H. NABER,
CARL J. MITZNER,
FIRST IOWA HYDRO ELECTRIC COOPERATIVE,
By Harry J. Strong,
Secretary-Treasurer.

State of Iowa,
County of Muscatine—ss.:

Harry J. Strong, Harry Imel, Frank A. E. Gillmor, P. H. Naber, and Carl J. Mitzner, being first duly sworn on oath, state that they have read the foregoing petition by them subscribed and that the matters and things contained therein are true to the best of their knowledge and belief.

HARRY J. STRONG,
HARRY IMEL,
FRANK A. E. GILLMOR,
P. H. NABER,
CARL J. MITZNER,

Subscribed and sworn to before me this 14th day of September, A.D., 1955.

(Seal)

R. L. LEBER,
Notary Public.

[fol. 63] (Order of District Court accepting Resignation of Wayne G. Cook as Special Master)

(Filed in U. S. District Court on September 21, 1955)

Wayne G. Cook, appointed special master herein on May 23, 1955, for the limited purposes described in the order of appointment, having tendered his resignation effective at the will of the court and matters having recently arisen which make it desirable and in fact necessary, in the opinion of the court, to immediately appoint a master with broader powers,

It is therefore Ordered that the resignation of Wayne G. Cook as special master herein, tendered this day, be and it is hereby accepted, effective immediately.

It is further Ordered that the said Wayne G. Cook be and he is hereby requested to submit a statement of his fees and disbursements as special master for consideration and allowance by the court in accordance with the order of appointment.

Signed at Davenport, Iowa, this 21st day of September, 1955.

WM. F. RILEY,
U. S. District Judge.

[fol. 64] (Order of District Court appointing Edward A. Doerr as Special Master)

(Filed in U. S. District Court on September 21, 1955)

This is an action involving alleged violations of the Sherman Anti-Trust Act, as amended, and of the Clayton Act.

Plaintiffs are a cooperative association organized under the laws of Iowa, and its five individual members and owners, who are also its officers and directors.

There are eleven named defendants, ten of whom are alleged to be private corporations engaged in the business

of producing, selling and distributing electrical power in Iowa, and the eleventh to be an unincorporated, voluntary association, including the ten named defendants among its members.

The issues are complicated beyond those normally to be found in the usual action. There are extended discovery proceedings in progress since June 6, 1955, and now awaiting resumption on Oct. 3, 1955, pursuant to order of court. Controversies have arisen between plaintiffs and their counsel since Aug. 29, 1955, which await solution, in respect of which plaintiff, Harry J. Strong, has requested disposition as soon as possible; depositions are pending to preserve testimony and other factors urge the action herein ordered to be taken.

The present engagements of the court to which commitment had been made long prior to this date require con- [fol. 65] tinuous absence of the judge from this division for regular terms of the court, commencing on Sept. 26, 1955, in the Southern Division, Oct. 3, 1955, in the Western Division, Oct. 17, 1955, in the Ottumwa Division, Oct. 24, 1955, in the Central Division, and Nov. 28, 1955, in the Eastern Division of this District.

The variety and number of the problems presented in this action, their complicated nature, the issues involved, the best interests of all persons and parties here affected, and the interests of justice combine to demand that these proceedings may be carried forward to their conclusion with the utmost dispatch. The court recognizes that the expense consequent to the appointment of a special master with general powers should make it the exception rather than the rule and has weighed the cost incident thereto against the benefits to be derived by all concerned, is firmly persuaded that the circumstances described and involved and the peculiar urgency of the many and complex problems require departure from the rule of avoiding the appointment of special masters where possible.

Accordingly, the court must find it to be advisable and necessary in the premises that a reference shall be made to

a special master who shall have and exercise all powers permitted to masters under Rule 53 of the Federal Rules of Civil Procedure and such additional specified powers as later may be conferred upon and delegated to him in that capacity.

It Is Therefore Now Hereby Ordered, That Edward A. Doerr of Davenport, Iowa, be and he is hereby appointed Special Master to have and exercise all powers authorized by Rule 53 of the Federal Rules of Civil Procedure, and that this entire cause be referred to him for such proceed-
[fol. 66] ings as may be necessary, to hear the evidence, to take testimony on any issue herein, to pass on disputed claims, to pass on applications of the parties and to make where necessary special findings of fact and conclusions of law thereon and to report the same to this court, and these powers he shall exercise until otherwise limited by order of this court.

It Is Further Ordered, That the fees and disbursements of the master shall be allowed by the court from time to time and that for the purpose of assuring the payment of his fees and disbursements as related to the services of the special master, except as directed by Paragraph IV of the order of May 23, 1955, herein, there shall be forthwith paid into the registry of this court, $2500.00 by the plaintiffs and $2500.00 by the defendants, which sum shall be paid out to the Special Master upon the order of court for the allowance of fees and disbursements, and that said sum shall be subject to increase from time to time as the necessities of the situation may require.

Signed at Davenport, Iowa, this 21st day of September, 1955.

WM. F. RILEY,
U. S. District Judge.

[fol. 67] (Motion of Plaintiffs to defer Deposit of Funds)

(Filed in U. S. District Court on September 26, 1955)

Comes now Harry J. Strong, Secretary-Treasurer of First Iowa Hydro Electric Cooperative as an individual

layman plaintiff representative of all other plaintiffs in Civil Action No. 1-224 in The United States District Court, Southern District of Iowa, Davenport Division, and by motion moves the Court to defer the requirements of the depositing of a sum of Two Thousand Five Hundred Dollars ($2500.) as ordered by the Court under its order dated September 21, 1955.

1. On September 16, 1955 the plaintiffs filed a motion asking for leave to remove Counsel of Record.

2. On September 2, 1955 in open court plaintiffs informed the Court the Attorneys of Record were discharged by the Plaintiffs.

3. The Order of September 21, 1955 is issued at a time when plaintiffs are without counsel and plaintiffs are unable to ascertain their legal right from competent attorneys having the right to examine all records of this case and properly advise the plaintiffs.

4. The matter before the Special Master is matter restricted in use by the court in such a manner that plaintiffs cannot be properly legally advised until new counsel become of record.

5. That plaintiff as a mere layman makes this in the form of a Motion so that it will be a part of the official record.

[fol. 68] 6. That the plaintiff makes this motion because the order demands ten times as much from the plaintiffs as is demanded of any one of the defendants while the record will show that the need for a Special Master to preside over depositions arose out of acts of the defendants and not of the plaintiffs and further that the deposition which is calling for all of this money is merely a repetition of written interrogatories and answers and a repetition of the books and records as furnished under the Courts Order for the production of books and records.

7. That as layman without counsel it is inconceivable that the non-profit Cooperative Association or its member should advance funds or pay the expense of the defendants

in their taking of depositions which were not requested by plaintiffs and/which have no value to the plaintiffs.

8. As layman it looks like the Court is requiring plaintiffs to pay half of the costs of information already known to the defendant which defendant is compelling plaintiffs to repeat in a most extravagant and costly manner and in furtherance of the defendants avowed purpose to break this non-profit Cooperative Association.

9. For the above reasons the plaintiffs feel they must have advice of counsel on this matter and the Courts own records indicates plaintiffs now have no attorneys of record trusted by plaintiffs.

Therefore, it is requested that this matter of depositing funds be deferred until such time as plaintiffs are allowed to substitute counsel and be advised on this matter.

Dated this 26th day of September, 1955.

HARRY J. STRONG,
Secretary-Treasurer.
First Iowa Hydro Electric Cooperative.

[fol. 69] (Order of District Court denying Motion of Plaintiffs to defer Requirement of Deposit.)

(Filed in U. S. District Court on September 27, 1955.)

Plaintiff Harry J. Strong has filed a motion, on behalf of himself as an individual and as "representative of all other plaintiffs," to defer the requirement of the deposit of $2500 by plaintiffs as ordered by this court on Sept. 21, 1955, asking leave to defer such deposit until determination of plaintiffs' motion for leave to remove counsel, filed Sept. 16, 1955.

The court's order of Sept. 21, 1955, became necessary for the reasons therein stated which include plaintiffs' motion of Sept. 16, 1955, and other related problems.

There is no restriction upon the right of plaintiffs to seek the advice and assistance of counsel as to their controver-

sies between themselves and their counsel named in their motion of Sept. 16, 1955.

The powers of the master appointed Sept. 21, 1955, are deliberately and intentionally broad and the matter of depositions is but an incident of his powers and duties. The order provides for the continued payments by participating defendants of the costs of discovery depositions conducted by defendants, but provision must be made for other fees [fol. 70] and disbursements of the master related to other subjects generally referred to him, including e.g., the plaintiffs' motion of Sept. 16, 1955, and related matters.

The master's compensation, except as provided in the last paragraph of the order of Sept. 21, 1955, will be presently paid by the parties. It is to assure such payment that the advance deposit is required "forthwith." It is a condition of plaintiffs' going forward with this action that such deposit be made forthwith.

The Clerk will enter the following

Order:

The motion to defer deposit of funds, filed by Harry J. Strong in his own behalf and as representative of all plaintiffs herein on Sept. 26, 1955, having been duly considered, is hereby denied, and plaintiffs are directed to make the deposit of $2500, required by the order of this court on Sept. 21, 1955, to be made "forthwith", by payment into the registry of this court, as a condition of going forward with this action.

Signed at Des Moines, Iowa, this 27th day of September, 1955.

WM. F. RILEY,
U. S. District Judge.

[fol. 71] (Order of Special Master on Motion of Plaintiffs to remove France, France & Nady, et al., as their Attorneys.)

(Filed in U. S. District Court on September 29, 1955.)

It is ordered that the motion of plaintiffs entitled "Motion for Leave to Remove France, France & Nady and

James R. McManus and Allan R. Shepperd as Attorneys for Plaintiffs Herein," as well as any resistance or application which may be filed in response to said motion by said attorneys or any of them shall be heard at the Petit Jury Room, Federal Building, Davenport, Iowa, commencing at 2:00 o'clock P. M. on October 3rd, 1955. For the purposes of said hearing plaintiffs will be privileged to be represented by counsel of their choosing. Because of the allegations of paragraph 17 of the application, counsel for defendants will be privileged to be present at the hearings but may take part therein, if at all, only to such extent as the Special Master may permit in the course of the hearing upon request made.

Dated September 29th, 1955.

EDWARD A. DOERR,
Special Master.

[fol. 72] (Resistance of France, France & Nady, et al., to Motion of Plaintiffs to remove them as Attorneys and Application by Attorneys for Affirmative relief.)

(Filed in U. S. District Court on September 29, 1955.)

Come now France, France & Nady, James R. McManus and Allen R. Shepherd, attorneys of record for plaintiffs in the above entitled cause, and resist the motion filed by plaintiffs September 18th, 1955, in which plaintiffs seek to remove said attorneys, and in which plaintiffs also ask that the matter of fixing attorneys' fees be postponed and reserved until the conclusion of the case, and for resistance and answer to the allegations of the motion state:

1. Said attorneys admit that First Iowa Hydro Electric Cooperative is an Iowa corporation maintaining its principal office in Muscatine, Iowa; that Frank A. E. Gillmor is its president, Carl J. Mitzner is Vice President, Harry J. Strong is Secretary-Treasurer, and that the three men named, together with Harry Imel and P. H. Naber, constitute the Board of Directors of First Iowa Hydro Electric

Cooperative as alleged in paragraphs 1 to 6 inclusive, of said motion.

2. These attorneys admit they are attorneys of record for the above named plaintiffs in the above entitled cause and have no doubt that plaintiffs have found it impossible to retain any additional, reputable lawyers to represent them in this action, as alleged in paragraph 7 of said motion, although they have certainly tried to do so.

[fol. 73] 3. These attorneys admit the allegations of paragraph 9 of the motion and allege that France, France & Nady were retained in November, 1953, and that James R. McManus and Allen R. Shepherd were retained by the plaintiffs in January, 1954.

4. The attorneys mentioned above deny that they were employed by virtue of or on the basis stated in the purported resolution alleged to have been adopted by the board of Directors of the Cooperative, as stated in paragraph 9 of said motion of plaintiffs, although it is admitted that plaintiffs would be [leable] for court costs and "out of pocket" expenses of these attorneys. These attorneys further state that the purported resolution was brought to their attention long after they had been employed and after this action was instituted and that plaintiffs were promptly advised that [is] would not affect the contracts of employment which had been [make] long prior thereto and that these attorneys were not bound thereby and did not recognize the right of the cooperative to attempt to revise the terms of employment of these attorneys by such means. Thereafter, these attorneys continued to appear for and act in behalf of these plaintiffs at all subsequent proceedings in this litigation and with the knowledge and acquiescence of plaintiffs.

5. These attorneys admit that plaintiffs have paid them some money, in accordance with their contracts, but not as much as $5,000, and plaintiffs have not paid all of said attorneys' hotel, travel and meal expenses incurred in connection with the action and the plaintiffs and each of them are still indebted to these attorneys on account of "out of pocket" expense paid or incurred by them for those items, as well as long distance telephone calls, for which they have

not been reimbursed. These attorneys demand strict proof of the allegations of paragraph 10 of said motion and deny the truth of the allegations set forth therein.

6. These answering attorneys deny that they have made demands for money over and above expenses, repeatedly, although they do admit they have demanded that money be paid to them from time to time, in accordance with their [fol. 74] contracts of employment. It is admitted that J. R. McManus wrote a letter to "Harry J. Strong containing the sentence set forth in paragraph 11 of the motion, and that after three letters upon the subject some money was paid to McManus in advance in Des Moines before he went to Davenport to participate in taking depositions on June 5th, 1955, the money being received at 9 o'clock P. M. on June 4th, 1955.

7. Those attorneys deny the allegations set forth in paragraph 12 of said motion and state that at no time have they refused to perform any actions in furtherance of this action, and on the contrary, allege that they have at all times diligently protected and assiduously safeguarded the rights and interests of the plaintiffs with respect to this law suit and all proceedings connected with it.

8. The answering attorneys deny the allegations contained in paragraph 13 of said motion, and specifically deny that they have made a demand upon plaintiffs for the payment of $10,000.

9. The answering attorneys deny the statements set forth in paragraph 14 of said motion.

10. The answering attorneys deny the claims made in paragraph 15 of said motion but they do admit they have resented and prevented the unwelcome, attempted intrusion of unknown and uninvited "outsiders" into a law suit in which the attorneys of record have devoted twenty-two months of their time and effort.

11. These answering attorneys deny the statements contained in paragraph 16 of the motion, although admitting that McManus has been to Chicago since August 24, 1955,

and while there talked to an engineer, and an investment banker.

12. These attorneys admit that they have stated that the strategy of the opposition was to break plaintiffs of funds to continue said law suit as alleged in paragraph 17 of said motion, but allege that they have not succeeded in doing so. These attorneys deny that they have demanded the payment of the $10,000, but in any event, that sum was not part of the general assets of plaintiffs corporation but was a trust fund, so that the release of the trust fund to their attorneys would not constitute a furtherance of de- [fol. 75] fendants' strategy, as the money did not belong to plaintiffs. We believe plaintiffs are committed to the philosophy that it is cheaper to attempt to discharge lawyers than to pay them money provided for that purpose by third parties interested in the success of the litigation, although such action is in breach of trust, in violation of their agreements and amounts to a fraudulent conversion of trust funds.

13. These answering attorneys allege that they have at all times discharged their responsibilities to their clients in this case to the best of their respective abilities, at great loss and [sacrofice] to themselves, and have on all occasions conducted themselves with respect to plaintiffs and the law suit in strict accordance with the highest standards of professional ethics and traditions. The statement of plaintiffs in paragraph 18 of the motion that they have lost faith in their attorneys is an after thought which never entered their heads until they came into possession, through fraud and deceit and false representations, of certain funds from which they were to make payments to these attorneys, and prior thereto they were lavish in the praise of the ability of these attorneys and their conduct in connection with this suit in behalf of plaintiffs and on numerous occasions expressed their entire satisfaction with these attorney's services, to these attorneys and others. These attorneys therefore, deny that the assertions in said paragraph 18 are made in good faith.

14. In response to the statements contained in paragraph 19 of said motion, these attorneys admit that J. R.

McManus told the plaintiffs that these attorneys possessed a greater interest in the law suit than the individual plaintiffs and that the statement is true, but deny the conclusions "thus endeavoring to appropriate this cause of action unto themselves, regardless of the rights and welfare of the plaintiff" which statement is pure "balderdash." Furthermore, these attorneys have never asserted any interest in conflict with or detrimental to the rights and interests of these plaintiffs.

[fol. 76] 15. These answering attorneys admit that in July, in the Mississippi Hotel in Davenport Attorney James R. McManus did repel a vicious and unprovoked assault on him by Harry J. Strong, general manager and Secretary-Treasurer of First Iowa Hydro Electric Cooperative, using no more force than was necessary for his own protection but deny that serious physical injury was caused Harry J. Strong thereby.

16. These attorneys deny paragraph 21 of plaintiffs' motion.

17. These answering attorneys admit that they have refused to work with other attorneys not approved by them and that the remaining statements contained in paragraph 22 are substantially correct, and by way of further explanation state that plaintiffs were told they could not change the lawyers of record and substitute counsel unless and until they either paid or secured the original attorneys employed in the case for services and expenses to date and that plaintiffs were not willing or able to do so, and furthermore, that because of the terms of their employment and their interest in the subject matter of this suit no other lawyers could be employed in their stead, or without the consent of these present attorneys of record.

18. In answer to the statements alleged in paragraph 23 of said motion these answering attorneys deny that there was anything unethical about their action in filing a motion to quash the unauthorized, and now withdrawn, appearance of the law firm of Bell Farrar and Scott, of Rock Island, Illinois, for the reasons stated in our motion to quash and appearance filed in this case which motion is hereby referred to and made a part hereof.

19. That these answering attorneys admit that the plaintiff Harry J. Strong on September 2, 1955, made a statement in their hearing as to their alleged discharge and they deny the statements in paragraph 24 of said motion that these attorneys have no standing in this court at this time and also deny the statement that these attorneys have no interest which will allow them to bring any action to protect themselves in Civil Action No. 1-224 in this court. These answering attorneys allege that plaintiffs are now [fol. 77] represented by counsel of record in this case and cannot appear both by counsel and personally, in their own behalf, and they have no standing in this court while they are represented by counsel of record. These answering attorneys lack sufficient information to form a belief as to the truth of the remaining statements in said paragraph 23 and therefore deny each and all of said statements on information and belief and demand strict proof thereof.

20. That these answering attorneys admit that the amount of their fees chargeable against the plaintiffs might be increased on the successful conclusion of the suit, but that in all other respects these answering attorneys deny each and all of the statements in paragraph 25 of plaintiffs said motion.

21. In response to the averments contained in paragraph 26 of said motion these attorneys state that the entire unpleasant situation which exists was created by plaintiffs; that our association with plaintiffs by reason of their fraud and perjury appears now to have become almost intolerable; that the corporation is insolvent and plaintiffs are unwilling and unable to pay or secure us for fees and expenses, nevertheless, unless and until we are paid we are not willing to step out of the case, leaving its further prosecution to lawyers whom we do [no] approve. The statement that the determination of our fees is reserved until the completion of the trial is an untrue conclusion, because we are entitled to be paid or secured at this time, if any substitution of counsel is to be allowed.

22. That these answering attorneys concur in the suggestion in paragraph 27 of plaintiffs motion that oral tes-

timony be taken on the issues of fact raised by plaintiffs' motion and this resistence thereto.

Wherefore, these answering attorneys pray:

1. That the plaintiffs' prayer that these attorneys be stricken from the records as attorneys of record in this cause be denied.

2. That if any substitution of counsel is to be permitted [fol. 78] that as a condition precedent to such substitution that our compensation for services and expenses to date be fixed, allowed and paid or adequately secured.

3. We ask that oral testimony be taken on controverted issues of fact.

Application for Affirmative Relief.

Come now France, France, & Nady and James R. McManus and Allan R. Shepherd, attorneys of record for plaintiffs in the above entitled cause, and respectfully petition and pray to the court that they may be granted relief in this proceeding for the reasons and upon the [graounds] hereinafter set forth:

1. These attorneys were employed by the plaintiffs to commence and to prosecute the above entitled cause, France, France, & Nady being employed in November, 1953, and James R. McManus and Allan R. Shepherd being employed in January, 1954.

2. That under and by virtue of the terms of the contracts of employment and the contingent fee character of the agreements concerning the ultimate compensation for their services, and by reason of the services performed by them in behalf o plaintiffs in connection with this suit, these attorneys, have an interest in the subject matter of this law suit and have a power coupled with an interest by reason of which they are entitled to continue to prosecute this suit and to earn the contingent fee contemplated by their contract of employment.

3. That on or about August 1, 1955 the plaintiff First Iowa Hydro Electric Cooperative case into possession of

the sum of $15,000. in trust, nevertheless, for certain uses and purposes and said funds were received by said cooperative for specific purposes and impressed with a trust in accordance with the contract and agreement of said parties. That the funds were advanced as follows, $5,000 by Seth Gooder, $5,000 by Joseph R. Condon and $5,000 by Lloyd Drexler, all of whom were and are citizens and resi-
[fol. 79] dents of the State of Illinois.

4. That Harry J. Strong, General Manager, Secretary-Treasurer of the Cooperative mentioned above acted for and in behalf of the Cooperative in connection with the solicitation and agreement with respect to the advancement of the three sums of $5,000 each mentioned above. That it was agreed between said Cooperative and the three individuals named that said sum of $15,000 was not to be used by plaintiffs unless and until plaintiffs had raised and had in their possession an additional sum of $10,000; that no part of said $25,000. when raised, should be used to pay any of the personal or living expenses of the said Harry J. Strong, but only for attorney fees and expenses incidental to the continued prosecution of this law suit; that of the sum of $15,000 advanced by the three individuals above named $10,000 thereof was to be used forthwith to pay services and expenses of France, France, & Nady, James R. McManus and Allan R. Shepherd, $5,000 was to be paid to France, France, & Nady and $5,000 was to be paid to James R. McManus and Allan R. Shepherd, as soon as plaintiffs raised the total sum.

5. That notwithstanding said agreement and at the time said agreement was made the said Harry J. Strong, although pretending to agree with the terms thereof, entertained the secret intent and purpose of not carrying out the agreement or performing the trust, but he simply pretended to agree to hold said funds in trust and to utilize them for the uses and purposes aforesaid in order to deceive and defraud the said Seth Gooder, Joseph P. Condon & Lloyd Drexler, and the persons intended to be benefitted by said trust. There was no mutuality of obligation or consent or meeting of minds between Seth Gooder, Joseph P. Condon, Lloyd Drexler and the Corporation mentioned above

because of the secret intent, deceit and fraud which was practiced upon Gooder, Condon & Drexler as aforesaid.

6. That the said Gooder, Condon, and Drexler trusted the said Harry J. Strong at the time the aforesaid agreement was made, and the trust created, and/were deceived [fol. 80] by him and believed he would perform the agreement and trust and utilize said trust fund according to the conditions imposed upon it and the cooperative and Harry J. Strong but at no time did the latter have any good faith intent to carry out said agreement or perform the trust.

7. That by reason of the fraudulent statement and/representations of the said Harry J. Strong and relying thereon and being deceived thereby the said Gooder, Condon, and Drexler were induced to advance said $15,000 believing that the funds would be devoted to the uses and purposes for which they were intended and had they not so believed, relied and trusted they would not have advance and paid said sum of money as aforesaid, That the said Gooder, Condon & Drexler, received no consideration or anything of value for said funds. That after the plaintiffs came into possession of said sum of $15,000 they repudiated the trust and refused to perform and carry out their agreement and on the contrary said funds were turned over by the Cooperative to the plaintiff Harry J. Strong who is rapidly dissipating said funds and using them for his own needs instead of the purpose for which the funds were intended and the Cooperative and Harry J. Strong have failed, neglected and refused to pay from said sum of $15,000, $5,000 thereof to France, France and Nady and a like sum of $5,000 to James R. McManus and Allan R. Shepherd, although they have stated and represented that they have raised in excess of $25,000 for the purposes mentioned in paragraph 4 hereof.

8. That the plaintiffs are attempting to discharge these attorneys as their attorneys of record in the above entitled cause and are seeking to perpetrate a fraud upon this court and to use this court and this law suit as an instrument for the commission of a fraud and have wholly repudiated and attempted to rescind the agreement by means of which they came into possession of the $15,000 trust fund.

[fol. 81] 9. That by reason of the foregoing facts, if the said Harry J. Strong claims that he was acting [honesly] and in good faith, in connection with said transactions by means of which said funds come into possession and control of plaintiffs, a trust was created and a contract for the benefit of these attorneys was entered into, and if he was acting in bad faith, a constructive trust arose, and said funds are, therefore, held in trust, in any event, and to permit their retention by the plaintiffs under these facts, and after a repudiation of the trust, would result in their unjust enrichment, inasmuch as it was never intended that said funds should be commingled with or become part of the assets of said Cooperative, or be used for its general purposes, or Harry J. Strong's private needs, but all of the $25,000 trust fund was to be used only for the purposes set forth in paragraph 4 hereof.

10. That by reason of the foregoing facts the plaintiff First Iowa Hydro Electric Cooperative and its officers and directors have received and not hold in trust the $15,000 mentioned above which they are using in breach of their agreement and in violation of the terms and conditions of the trust, and but for the protection of this court said funds will be wholly dissipated and used for purposes other than those for which they were intended, that this court should impress said funds with a trust and declare them to be held in trust by the First Iowa Hydro Electric Cooperative and its officers who are plaintiffs in this suit and they should be ordered to account to this court in which they are now seeking to obtain relief.

11. That these attorneys have performed valuable services worth far in excess of the trust fund and in behalf of the plaintiffs since their original employment in this suit, for which they have not been paid or compensated; that they have paid or incurred expenses for hotel, travel, meals, and long distance telephone calls, for which they have not been reimbursed, and that this court should take testimony for the purpose of ascertaining the reasonable value of the services of these attorneys earned to date and as to their [fol. 82] unpaid expenses, and in the event this court, after a hearing, should see fit to remove these attorneys as a condition to permit a substitution of attorneys in their place and stead the plaintiffs should first pay the amount

found to be due these attorneys, plus expenses, or adequately secure the payment thereof.

Wherefore these attorneys pray that this court impress a trust upon the $15,000 fund heretofore mentioned; and declare that the plaintiffs hold said funds impressed with a trust for the use and benefit of the attorneys and such other persons as their interests may appear, and that plaintiffs be required to account for said funds, and to pay [thr] same in to the registry of this court, in trust, that this court fix and allow suitable sums for the attorneys as compensation for the services earned to date and to reimburse them for their unpaid expenses to date as a condition to allowing any change or substitution of attorneys of record in this case and that the court find that these attorneys have an interest in the subject matter of this suit and that this court make such orders as may be appropriate and suitable in the premises to protect the rights and interests of these attorneys, as officers of this court, and as attorneys of records.

FRANCE, FRANCE & NADY,

JAMES D. FRANCE,

XAVIER C. NADY,
First National Bank Bldg.,
Tipton, Iowa.

J. R. McMANUS.

ALLAN R. SHEPHERD,
417 Fleming Bldg.,
Des Moines, Iowa.

[fol. 83] (Motion of Seth Gooder, et al., for Leave to Intervene)

(Filed in U. S. District Court on September 30, 1955)

The United States District Court, Southern District of Iowa, Davenport Division.

First Iowa Hydro Electric Cooperative, et al., Plaintiffs, No. 1-224. vs. Civil.
Iowa-Illinois Gas & Electric Company, et al., Defendants.

Seth Gooder, Joseph P. Condon and Lloyd Drexler move for leave to intervene in this action in order to assert the

matters set forth in their proposed complaint, of which a copy is hereto attached, on the ground that these intervenors and each of them have a substantial interest in the subject matter of the action, that the representation of said interest by the original plaintiffs is inadequate, that the interest of these interveners and the main action have questions of law and fact in common and that the intervention of these intervenors will not to any substantial extent delay or prejudice the adjudication of the rights [of the rights] of the original parties.

ARTHUR G. FIELD,
208 S. LaSalle St.,
Chicago, Illinois.

GEORGE E. DONALLEY,
420 Royal Union Bldg.,
Des Moines, Iowa.

Attorneys for the Intervenors.

[fol. 84] Complaint of Intervenors Seth Gooder, Joseph P. Condon and Lloyd Drexler.

The United States District Court, Southern District of Iowa, Davenport Division.

First Iowa Hydro Electric Cooperative, et al., Plaintiffs, No. 1-224. vs. Civil.
Iowa-Illinois Gas and Electric Company, et al., Defendants.

1. The intervenors, Seth Gooder, Joseph P. Condon and Lloyd Drexler, and each of them are citizens and residents of the State of Illinois and all of the parties plaintiff in the above entitled cause are citizens and residents of the State of Iowa and Fr[illegible]ce, France and Nady, James R. McManus and Allan R. Shepherd are likewise each and all of them citizens and residents of the State of Iowa and each of the individual intervenors named above have a claim or interest in this controversy in excess of $3,000 exclusive of interest and costs and therefore diversity of citizenship exists between these intervenors and all other persons involved in the present proceeding in the above entitled cause.

2. That this is an action by the plaintiffs named in the caption hereof against the defendants named therein in which the plaintiffs seek to recover treble damages under the provisions of what are commonly known and referred to as the Sherman Act and the Clayton Act being acts of the Congress of the United States and France, France and Nady, James R. McManus and Allan R. Shepherd are now and have been since the institution of said suit in this court attorneys of record herein for and in behalf of the plaintiffs.

3. These intervenors would show that the plaintiffs in this action are the officers of the above named First Iowa Hydro Electric Cooperative and that these intervenors have for the past number of years rendered services and contributed moneys to the said First Iowa Hydro Electric [fol. 85] Cooperative to further the aims and purposes for which said cooperative was organized and in the past have advanced large sums of money to said cooperative, the intervenor, Joseph P. Condon having paid out or advance sums in excess of $85,000 and the cooperative is indebted to Seth Gooder by reason of advances and contract indebtedness in the amount of approximately $65,000.

4. On or about the 25th day of July 1955 these intervenors at the solicitation and request of the First Iowa Hydro Electric Cooperative acting through Harry J. Strong, Secretary, Treasurer and General Manager, advanced to First Iowa Hydro Electric Cooperative the sum of $15,000 on the express agreement and condition that said sum together with an additional sum of $10,000 which was to be raised by First Iowa Hydro Electric Cooperative was to be placed in a special bank account to be used only for the payment of attorneys fees, court costs, and other expenses incidental to and growing out of the prosecution of the above entitled cause in this court and it was also expressly agreed that no part of said funds advanced as aforesaid by these intervenors to said cooperative should be utilized for the living expenses or other personal needs of the above mentioned Harry J. Strong and that no part of said $15,000 was to be used until an additional $10,000 had been raised by said cooperative. It was further stipu-

lated and agreed by [an] between these intervenors and the First Iowa Hydro Electric Cooperative at the time the arrangements were made for the advancement of said $15,000 fund that $5,000 of said fund was to be paid to France, France and Nady, $5,000 thereof was to be paid to James R. McManus and Allen R. Shepherd the attorneys mentioned above to apply to their office overhead, travel, living and personal expenses incurred during the prosecution of the above entitled cause and said fund was paid to First Iowa Hydro Electric Cooperative upon that condition and accepted by the First Iowa Hydro Electric Cooperative upon that basis.

5. These intervenors would further show that at the time of making the above mentioned payments of $15,000 [fol. 86] the said First Iowa Hydro Electric Cooperative through its Secretary, Treasurer and General Manager, Harry J. Strong, represented to these intervenors that the services of the above mentioned attorneys had been satisfactory and that great progress had been made in this cause of action to date and that said attorneys had diligently and carefully protected the rights and interests of the plaintiffs in said litigation at all times and that but for said representations and their belief in and reliance upon such representations by these intervenors they would not have advanced the sum of $15,000 by these intervenors the aforesaid cooperative through its Secretary, Treasurer and General Manager, Harry J. Strong, promised these intervenors that said cooperative and its officers would faithfully perform and carry out the aforesaid conditions on which said advancement was made but that in truth and in fact said General Manager, Harry J. Strong made said promise with no intentions of ever performing it and said Strong made said promise to these intervenors wilfully and fraudulently and with the knowledge that these intervenors relied on said promise and that by means of said false and fraudulent promise and other false and fraudulent representations said cooperative through its Secretary, Treasurer and General Manager, Harry J. Strong procured possession of said funds and said cooperative and its officers will be unjustly enriched if permitted to keep

and retain said funds in breach and in violation of conditions on which they obtained them.

7. That thereafter said General Manager Strong has represented to these intervenors that said cooperative has raised the additional sum of $10,000 pursuant to its agreement above mentioned and now has on hand a total sum of approximately $29,000 in cash hidden at some undisclosed place but that in furtherance of the aforesaid fraudulent scheme said cooperative and its various officers have failed and refused to perform the aforesaid conditions or to carry out the trust imposed on said funds but have applied a substantial amount of said funds to the personal needs and [fol. 87] profit of said Harry J. Strong and to various other purposes not intended by these intervenors, the exact details of which are unknown to these intervenors.

8. That these intervenors by reason of the indebtedness heretofore mentioned which is [oweing] by the First Iowa Hydro Cooperative to them have a substantial interest in the successful out come of this litigation. That the cooperative has no funds or assets from which these intervenors may be repaid for their advances unless said lawsuit is prosecuted to a successful final conclusion. That the present attorneys for the plaintiffs have the complete confidence of these intervenors and these intervenors express the belief that said attorneys should be permitted to continue in and to complete the prosecution of said lawsuit and that the plaintiffs in said cause now seek to substitute their present attorneys as a furtherance of said cooperative's fraudulent scheme to unjustly enrich itself and avoid payment in conformance with the trust created by the parties. That these intervenors believe that if the present attorneys are continued in charge of said litigation the rights and interests of these plaintiffs and of these intervenors will be fully and competently safeguarded and protected.

9. That by reason of the foregoing statements and allegations the First Iowa Hydro-Electric Cooperative and its officers have received and now hold in trust the $15,000 mentioned above which they are seeking to use in breach of their agreement and in violation of the terms and condi-

tions of the trust and that but for the interposition and protection of this court said fund will be dissipated and used for purposes other that for which it was intended that they should be used and that this court should impress said funds with a trust and declare them to be held in trust by the First Iowa Hydro Electric Cooperative and its officers who are plaintiffs in the above entitled cause and they should be compelled to account to this court in which they are seeking relief and to these intervenors for said funds.

[fol. 88] 10. That these intervenors both orally and in writing have demanded of said plaintiffs in the above entitled cause that they utilize said funds for the sole purposes for which they were advanced by these intervenors or return all of said funds to these intervenors without delay but, notwithstanding said demands of these intervenors and in repudiation of the trust the plaintiffs have wrongfully and willfully kept and retained said funds for their own use and to divert them from the purposes for which they were intended.

Wherefore These intervenors pray that this court make and enter an order impressing said $15,000 with a trust and that this court declare the plaintiffs in the above entitled cause hold said funds impressed with a trust and that said plaintiffs be ordered to account for said funds and to pay the same into the office of the clerk of this court for the use and benefit of these intervenor and all interested parties as their interests may appear. The intervenors ask this court to grant such other and further relief as may be deemed suitable in the premises to protect the rights and interests of these intervenors.

ARTHUR G. FIELD,
208 S. La Salle St.
Chicago, Illinois.

GEORGE E. DONALLY,
420 Royal Union Building,
Des Moines, Iowa.

Attorneys for Intervenors.

State of Illinois,
Cook County—ss.:

I, Joseph P. Condon, being first duly sworn on oath depose and said that I am one of the intervenors named herein and that I have read the foregoing complaint in intervention and know the contents thereof and am familiar with the facts therein stated and the allegations contained therein are true as I verily believe.

JOSEPH P. CONDON.

[fol. 89] Subscribed before me by the said Joseph P. Condon on this 22 day of September, 1955.

(Seal)

JOHN M. SHANAHAN,
Notary Public in and for Cook County, Illinois.

[fol. 90] (Order of Special Master on Motion of Plaintiffs to remove France, France & Nady, et al., as their Attorneys)

(Filed in U. S. District Court on October 5, 1955)

The above entitled cause came on to be heard in accordance with prior orders on the 3rd day of October, 1955 on the Motion For Leave To Remove France, France & Nady And James R. McManus And Allan R. Shepherd As Attorneys For Plaintiffs Herein filed in this case by plaintiffs and on the paper filed by said attorneys entitled "Resistance To Motion To Remove Attorneys And Application By Attorneys For Affirmative Relief." James D. France, Xavier C. Nady, James R. McManus and Allan R. Shepherd (being the attorneys of record for plaintiffs whom plaintiffs propose by their said motion to dismiss) appeared in person. Plaintiffs, although called, failed to appear in person or by attorney and were declared to be in default and are hereby so adjudged. Said attorneys thereupon introduced evidence and rested.

The matter heard is adversary in nature, although it is incidental to the main case and is heard on motion. I

therefore make findings of fact and state conclusions of law in an accompanying opinion. Such findings and conclusions will also make a review of this order more convenient if that is desired.

[fol. 91] It is ordered:—

1. The said motion of plaintiffs is sustained subject to the condition hereinafter stated.

2. The said condition is that plaintiffs shall, before dismissing their said attorneys, pay to James D. France and Xavier C. Nady, the sum of $100,000.00, as attorneys' fees, and to James R. McManus and Allan R. Shepherd, jointly, the further sum of $100,000.00, as attorneys' fees, except as plaintiffs may be relieved from such prior payment pursuant to paragraph 3 below.

3. Plaintiffs are granted leave, upon application, to reopen this matter for the purposes of showing that they have no means sufficient to pay said sums and of applying for a consequent reduction thereof upon just terms.

4. In the event that the Motion for Leave to Intervene filed herein by Seth Gooder, Joseph F. Condon and Lloyd Drexler shall be sustained and a fund shall be brought into the court pursuant to their Complaint of Intervention, then such fund shall thereupon stand impressed with a trust for payment of the costs of prosecuting this action, including the fees of said attorneys.

5. Pending performance of said condition and the consequent dismissal of said attorneys they are required, fully and effectively, as plaintiffs' attorneys, to continue the representation of plaintiffs herein.

6. Except as herein provided said motion of plaintiffs and said resistance and application of said attorneys are overruled and denied.

Dated October 5th, 1955.

EDWARD A. DOERR
Special Master

[fol. 92] (Opinion of Special Master on Motion of Plaintiffs to remove France, France & Nady, et al., as their Attorneys)

(Filed in U. S. District Court on October 5, 1955)

Plaintiffs have moved for leave to dismiss their attorneys. Their motion will be considered as one for substitution of counsel, i.e. a motion to substitute plaintiffs as attorneys pro se. Plaintiffs' attorneys have filed a resistance to the motion and an application for affirmative relief. Hearing has been had on the motion and the responsive papers filed by the attorneys.

The motion alleges disloyalty and other faults by the attorneys in the representation of plaintiffs. The position taken by the attorneys is summarized as follows:

1. They deny any fault in their professional relation with plaintiffs.

2. They allege that plaintiffs received from one Gooder, Condon and Droxler the sum of $15,000.00 upon express directions to apply the same in payment of costs of the present litigation (including, specifically, payment of $10,000.00 thereof to the attorneys) and that plaintiffs promised so to apply the sum but failed to do so.

3. They allege that they have an interest in the subject matter of the action under the terms of an indefinite contingent fee contract.

[fol. 93] 4. They pray: (a) that a trust be impressed on the $15,000.00 sum, and that plaintiffs be required to account for that sum and pay it into court; (b) that provision be made for the payment of their fees and expenses in their employment; (c) that the court find them to have an interest in the subject matter of the action; and (d) that the court make orders appropriate for their protection.

Plaintiffs defaulted at the hearing. The attorneys, however, presented their case.

I make the following findings:

I. Plaintiffs' attorneys have served plaintiffs loyally, zealously and effectively in the preparation for and prosecution of this action. No cause exists for their discharge.

II. The reasonable value of the services of plaintiffs' attorneys to and including August 31, 1955 (the date referred to in the testimony), is as follows:—

James D. France and Xavier C. Nady, jointly—$100,000.00.

James R. McManus and Allan R. Shepherd, jointly—$100,000.00.

III. The attorneys were employed upon an oral contract providing in substance that their out of pocket expenses in connection with the action, including expenses of travel and subsistence while away from home, should be reimbursed to them and that they should be paid further sums as fees, from time to time, if that could conveniently be done by plaintiff First Iowa Hydro Electric Cooperative, but that otherwise their compensation should be contingent upon success in the litigation and should bear a proportional, but not specifically defined, relation to the amount recovered by plaintiffs in the litigation.

IV. On or about August 1, 1955, plaintiff First Iowa Hydro Electric Cooperative received the sum total of [fol. 94] $15,000.00 from strangers to the litigation. The sum was paid upon the express direction and condition that it be held and used solely for expenses of the litigation and, more specifically as to a part of the sum, that $5,000.00 be paid to James D. France and Xavier C. Nady, as attorneys' fees, and a further $5,000.00 to James R. McManus and Allan R. Shepherd, as attorneys' fees. Said sum of $15,000.00 was received and accepted on said terms. The evidence to support the findings in this number IV is clear, satisfactory and convincing.

V. The sum of $15,000.00 paid and received as stated in number IV has not been used or applied for the stated purposes in whole or part.

VI. There is no sufficient showing in the record what sums are due plaintiffs' attorneys as a balance of account for out of pocket expenses paid by them; but the amounts so paid by said attorneys, respectively, exceed the total

sums paid to said attorneys, respectively, by plaintiffs in connection with the employment.

I state the following conclusions of law:—

A. Plaintiffs are privileged to discharge their attorneys regardless of fault and regardless of the contingent nature of the employment.

B. The privilege is qualified however, in that the attorneys can be dismissed only upon application for substitution and the entry of an order upon such application.

C. The privilege is further qualified in that the entry of the order of substitution is not a mere formality. On the contrary, the attorneys being without fault, the order for substitution should be conditioned upon payment by plaintiffs of the fees and disbursements of the attorneys in their employment by plaintiffs.

[fol. 95] D. If plaintiffs do not have means for full payment, the order of substitution should be conditioned upon payment only to the extent of plaintiffs' means. The burden of proof in this respect is on plaintiffs.

E. The basis of plaintiffs' liability to their attorneys is damages for breach of contract and the measure of damages is the reasonable value of the attorneys' services.

F. The only appropriate and presently useful measure for safeguarding the interest of the attorneys is by way of condition upon the order of substitition.

A little discussion will make more clear the bases for this opinion and the accompanying order.

It is clear that plaintiffs are privileged to discharge their attorneys by the orderly procedure of a motion and order for substitution. It is equally clear that the order should be conditioned upon payment of the fees and disbursements of the attorneys to the extent of the means possessed by plaintiffs. The client must not be bound forever to an attorney by the imposing of a condition of payment which the client, for lack of means, can not perform.

The confidential relationship between the two of them is inconsistent with any such bond. For the reasons stated I have, in spite of plaintiffs' default, left it open for them to show their inability to comply with the condition imposed in this case.

The attorneys have asked for further relief which has not been accorded them. Specifically, the attorneys have asked that the $15,000.00 sum referred to in the findings be ordered brought into court and that it be impressed with a trust for their benefit. But there is no precedent for any such action. The protection afforded the wrongfully discharged attorney in such proceedings as these may, upon the basis of precedent, consist of a condition upon the order for substitution; or the imposition of a [fol. 96] lien or charge on the sum or property recovered by the client; or the payment of the attorneys' claims out of any fund in court which is the client's property. (See, generally, the cases cited at 7 CJS Attorney and Client sec. 122 and those digested at 124 ALR 725.) In this case the attorneys ask me to go farther, to bring a fund into court—presumably by an order which would be the basis for contempt process. Lacking precedent for any such order, I am foreclosed from entering it. If such a provision is asked merely as an additional condition, the answer is ready that it would be only additional verbiage. If the present condition does not bring actual payment (to the extent of plaintiffs' means) an additional condition would not serve the purpose.

Additional reasons—for instance delay in the main case—may possibly exist for denying an order to bring the $15,000.00 fund into court. Any studied consideration of such additional reasons is reserved until submission of the Motion for Leave to Intervene which is now pending in this action and which has the purpose of bringing the same fund into court. My purpose is to avoid pre-judgment.

The accompanying order provides that if, pursuant to the intervention proceedings, the $15,000.00 fund shall be brought into court, then the fund will be subjected to the attorneys' claims. No further provision seems to me to be justifiable.

In the present state of affairs there is no reason to establish a lien or charge in favor of the attorneys against the judgment, if any, which plaintiffs may ultimately recover in this action. As matters now stand, the attorneys will be paid in full before a substitution, let alone a judgment. If plaintiffs show themselves unable to pay in full, the establishment of such a lien or charge may be considered at the time of such showing.

[fol. 97] The attorneys freely recognize their continuing obligation to serve plaintiffs in this action until the order for substitution has become unconditional. (See paragraphs 19 and 21 of their resistance.) My order also takes note of that obligation. There is accordingly no subsisting reason in plaintiffs' relationship with their attorneys for the further postponement of proceedings in this cause.

No question has been made in this proceeding as to an attorney's statutory lien.

An accompanying order gives effect to this opinion.

Dated October 5th, 1955.

EDWARD A. DOERR
Special Master

[fol. 98] (Order of Special Master permitting Plaintiffs to submit Written Statements on Motion of Seth Goodier, et al., for Leave to Intervene.)

(Filed in U. S. District Court on October 5, 1955.)

The interests of plaintiffs and their counsel of record may be adverse with respect to the Motion For Leave To Intervene filed in this matter by Seth Goodier, Joseph F. Condon and Lloyd Drexler. It is therefore ordered that plaintiffs may, at their election, for themselves or by counsel of their own choosing, submit brief, written statement in support of or in opposition to said motion. Any such statement shall be submitted to the Special Master on or before October 12th, 1955.

Dated October 5th, 1955.

EDWARD A. DOERR,
Special Master.

[fol. 99] (Order of United States Court of Appeals for the Eighth Circuit denying Motion for Leave to file Petition for Mandamus.)

(Filed in U. S. District Court on October 6, 1955.)

United States Court Of Appeals

For The Eighth Circuit

September Term, 1955 Monday, October 3, 1955

First Iowa Hydro Electric Cooperative, F. A. E. Gillmor, Carl J. Mitzner, Harry J. Strong, Harry E. Imel, and P. H. Naber, Petitioners,

No. 15,436. vs.

United States District Court for the Southern District of Iowa, Davenport Division.

Before John B. Sanborn, Circuit Judge and Robert C. Bell, District Judge.

In this matter there is this day presented to the Court a motion for leave to file petition for mandamus and injunction and for an order staying proceedings in First Iowa Hydro Electric Cooperative, et al., Plaintiffs, vs. Iowa-Illinois Gas and Electric Company, et al., Defendants, which is pending in the United States District Court for the Southern District of Iowa. Mr. Harry J. Strong, of 1011 E. High Street, Davenport, Iowa, and Mr. Harry E. Imel, of Muscatine, Iowa, P. O. Box 486, two of the plaintiffs, appeared on their own behalf. No notice of the motion for leave has been served upon anyone and it does not appear that the issuance of a writ of mandamus or a stay of proceedings would be in aid of the jurisdiction of this Court. After due consideration the said motion for leave to file the petition should be, and is by the Court hereby, denied for want of jurisdiction.

October 3, 1955.

[fol. 100] (Affidavit of Prejudice.)

(Filed in U. S. District Court on October 10, 1955.)

State Of Iowa,
County Of Scott—ss.

HARRY J. STRONG, being first duly sworn upon his oath deposes and says:

1.—I am a plaintiff in the above entitled cause and I make this affidavit as a representative of all other individual plaintiffs and as an officer of the First Iowa Hydro Electric Cooperative, the corporate plaintiff in this cause of action.

2.—I believe that the Honorable William F. Riley, Judge of the United States District Court in which this action was commenced and is now pending, and before whom it is to be tried or heard, has a personal bias and prejudice against our project, a hydro electric development on the Cedar River, and the reason for such belief is as follows:

(a) In 1932, Judge William F. Riley rendered an opinion for one Seth Gooder, an individual now seeking to intervene in this action, which opinion was paid for by the said [fol. 101] Seth Gooder, and which opinion advised against a hydro electric project on the Cedar River.

(b) That the Honorable William F. Riley was a member of the law firm of Carr, Cox and Riley in Des Moines, Iowa and that as a member of said firm, had as a principal client, the defendant, Iowa Power and Light Company; that the son of the Honorable William F. Riley is now a lawyer practicing law in Des Moines, Iowa in the law firm of Evans, Cox and Riley, a successor firm to the firm of Carr, Cox and Riley and that a principal client of said law firm, a principal client for which the son of the Honorable William F. Riley now performs legal services, is the defendant, Iowa Power and Light Company.

(c) That on the 2nd day of September, 1955, your deponent and other plaintiffs in this cause of action, filed with the Court, a Petition to Intervene on Rule to Show Cause on the Motion of Attorneys France, France and Nady and

James R. McManus and Allan R. Shepherd to quash the Entry of Appearance of the law firm of Bell, Farrar & Scott; that said Petition brought before the Court the fact that the plaintiffs had no counsel to whom they could, in confidence, turn for advice on their problems.

(d) That subsequent to this 2nd day of September, 1955, the Honorable William F. Riley, issued an Order dated September 6, 1955, an Order dated September 15, 1955, a second Order dated September 15, 1955, another Order dated September 21, 1955, a second Order dated September 21, 1955, and an Order dated September 27, 1955; and that each of the above Orders were Orders which were biased and prejudiced in that they were issued at a time when plaintiffs were without counsel and unable to be fully advised as to their legal rights under each and every Order. Further, that the Order dated September 21, 1955 [fol. 102] is, in the opinion of the plaintiffs, a denial of the plaintiffs of trial by a jury as has been requested in this case in that said Order appointed a new Master with the power to make findings of fact which are province of a jury and which Order, in invading the province of the jury, is a denial of the plaintiffs' constitutional right for a trial by jury.

(e) That said Order of September 21, 1955 appointed a new Master and that the new Master so appointed has in turn issued Orders which were prejudicial and carry out the bias and prejudice which is felt the plaintiffs are faced with in this case; the Orders of the Special Master being more particularly an Order dated September 28, 1955 and a second Order also dated Setpember 28, 1955, and an Order dated September 29, 1955, and an Order dated October 5, 1955. Your deponent feels that the bias and prejudice of the Honorable William F. Riley carry over and may be found also in those acting under him in this matter and the bias and prejudice can be found in each and every Order issued since September 2, 1955 in this matter.

(f) That the Special Master's Order of October 5, 1955 is drawn up in such a manner so that the plaintiffs have no right to have counsel of their own choosing without the acquiescence to an impossible condition of paying off Two Hundred Thousand Dollars ($200,000.), whereas the Court

well knows that the plaintiffs are mere laymen common in statute and operating as a non-profit cooperative.

(g) That your deponent, because of the impossible conditions which now exist in this matter under the Orders issued from September 2, 1955 by the Honorable William F. Riley, and those subordinate acting in his stead, requested of the Special Master that a postponement be granted in [fol. 103] said case to allow new counsel to prepare themselves to properly go forward in the matter. That new counsel contacted, will only enter the case if they have proper time for preparation; that the Special Master advised your deponent to contact Mr. Walker, one of the attorneys for the defendants on the proposition of a postponement; that Mr. Walker has been advised of the plaintiffs' position, but refused or failed to act upon a postponement so it could be had; that the impossible orders now existing by and through the Honorable William F. Riley puts plaintiffs in the position where depositions are to resume on October 10th at a time when plaintiffs will be unrepresented; that the expenses of a depostion are being incurred through a plan made known by the plaintiffs in various pleadings whereby the defendants are attempting to run up the cost and completely break the plaintiffs so they cannot pursue their cause of action, and the biased and prejudicial orders are merely furtherance of defendants' strategy, and plaintiffs now feel unless the Honorable William F. Riley is removed as a Judge in this matter, and that unless this case is assigned to a new Judge with Orders to strike all Orders entered in this case since September 2, 1955, from the record, your deponent and his associates will be denied a fair and impartial trial.

Dated this 10 day of October, A. D. 1955.

HARRY J. STRONG

Harry J. Strong, affiant in the above and foregoing affidavit, being first duly sworn on his oath, states that he has read the foregoing affidavit by him subscribed and that he knows the contents thereof and that the same are true to the [fol. 104] best of his knowledge and belief.

HARRY J. STRONG

Subscribed and sworn to before me this 10 day of October, A. D. 1955.

R. C. RESNICK
Notary Public.

(Notarial Seal)

Certificate Of Plaintiff.

I certify that I am a plaintiff of record in the above entitled cause and that since September 2, 1955 I and all other plaintiffs have completely lost faith in the counsel of record for the plaintiffs of record and have at all times since September 2, 1955 been unrepresented by counsel and that I am unable to obtain counsel to pursue this action until the Court enter an Order allowing me to retain counsel, which Order the Court has continuously refused to enter, and therefore I am not in a position to append to my affidavit of prejudice, a certificate of counsel, but certify to those same facts which would be certified to by counsel if the court would place me in a position where I could retain counsel; those facts are that I am informed as to the proceedings therein as found in the affidavit of prejudice and that such affidavit and application are made in good faith and not for the purpose of hindrance or delay, and further that the plaintiffs at all time want to speed this case to a fast conclusion but can only do so when they have counsel with whom they can place their confidence; that this affidavit of prejudice is being filed because it is felt it is the only means to hasten that day so this action can properly be prosecuted in the Courts before a jury and in trial.

HARRY J. STRONG

[fol. 105] To the Clerk of the above named Court:

Application is hereby made, for the reasons set forth in the foregoing affidavit and certificate, that appropriate proceedings be taken under 28 USC 144, as amended in 1949, to assign another judge to hear the proceeding.

Dated this 10 day of October, A. D. 1955.

HARRY J. STRONG,
For Plaintiffs.

[fol. 106] (Motion of Defendant, Union Electric Power Company, to dismiss Complaint)

(Filed in U. S. District Court on October 11, 1955)

Division I.

Defendants, Union Electric Power Company, through its attorney, Robert H. Walker, moves the Court pursuant to Rule 37(d) of the Federal Rules of Civil Procedure for an order dismissing the plaintiffs' Complaint upon the following ground:

1. For the willful failure and refusal of Harry J. Strong as plaintiff and as officer, director and managing agent of Plaintiff First Iowa Hydro Electric Cooperative, to attend the resumption of the taking of his deposition, on October 10, 1955, at 11:00 o'clock A. M., proper notice thereof having been previously given, and for the willful action of said Harry J. Strong in leaving the hearing room, and in refusing to remain to be interrogated, and for the willful refusal of said Harry J. Strong to testify after being advised by the Special Master to testify.

[fol. 107] Division II.

Defendant Union Electric Power Company through its attorney, Robert H. Walker, moves the Court for an order dismissing plaintiffs' complaint upon the following ground:

1. For the failure of the plaintiffs to deposit into the registry of this Court the sum of $2,500 pursuant to court orders entered September 21, 1955, and September 27, 1955, although the record in this case affirmatively shows that plaintiffs had ample funds with which to make such deposit, and had adequate time in which to comply with such orders.

Division III.

Defendant Union Electric Power Company through its attorney, Robert H. Walker, moves the Court, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure to dismiss the action for failure of plaintiffs to prosecute

this action or to comply with the Federal Rules of Civil Procedure or the orders of the Court, and in the following respects:

1. For the willful failure and refusal of Harry J. Strong as plaintiff and as officer, director and managing agent of Plaintiff First Iowa Hydro Electric Cooperative, to attend the resumption of the taking of his deposition, on October 10, 1955, at 11:00 o'clock A. M., proper notice thereof having been previously given, and for the willful action of [fol. 108] said Harry J. Strong in leaving the hearing room, and in refusing to remain to be interrogated, and for the willful refusal of said Harry J. Strong to testify after being advised by the Special Master to testify.

2. For the failure of the plaintiffs to deposit into the registry of this Court the sum of $2,500 pursuant to court orders entered September 21, 1955, and September 27, 1955, although the record in this case affirmatively shows that plaintiffs had ample funds with which to make such deposit, and had adequate time in which to comply with such orders.

[fol. 109] Defendant, Union Electric Power Company, requests the Court in making any orders of dismissal to make such dismissal with prejudice as against plaintiffs, and all of them, and requests the Court to assess all costs against the plaintiffs and each of them.

Defendant Union Electric Power Company further requests that the foregoing matters be set for hearing upon notice to plaintiffs and their attorneys of record as the Court may prescribe.

UNION ELECTRIC POWER COMPANY,
By Robert H. Walker, Its Attorney.

Joinder by Other Defendants.

The undersigned defendants, having been required by Order of Court entered May 16, 1955, to participate in taking of depositions noticed by defendant Union Electric

Power Company, including the taking of the deposition of Harry J. Strong, and now having been deprived of that right, join in and adopt in all particulars the foregoing motions to dismiss of defendant Union Electric Power Company.

IOWA-ILLINOIS GAS AND ELECTRIC COMPANY,
By Larned A. Waterman, Its Attorney.

[fol. 110] IOWA POWER AND LIGHT COMPANY,
By Howard Steele, Its Attorney.

IOWA SOUTHERN UTILITIES COMPANY,
By Robert Valentine, Its Attorney.

INTERSTATE POWER COMPANY,
By E. Marshall Thomas, Its Attorney.

KANSAS CITY POWER AND LIGHT COMPANY,
By Joseph J. Kelly, Jr., Its Attorney.

IOWA ELECTRIC LIGHT AND POWER COMPANY,

NORTHWESTERN LIGHT AND POWER COMPANY,
By T. M. [illegible]soll, Their Attorney.

IOWA PUBLIC SERVICE COMPANY,
By Byron L. Sifford, Its Attorney.

IOWA UTILITIES ASSOCIATION,
By Frederic M. Miller, Its Attorney.

Acknowledgment of Service.

The undersigned acknowledge receipt of copies of the foregoing this 10th day of October, 1955.

JAMES R. McMANUS,
XAVIER C. NADY,
Attorneys of record for Plaintiffs.

[fol. 111] In the United States District Court for the Southern District of Iowa, Davenport Division.

Affidavit of Service.

I, Robert H. Walker, one of the attorneys for Union Electric Power Company, depose and state that I served a copy of the foregoing motions by depositing a copy of the same in the United States mail to the last known address to the following persons, and at the following addresses:

F. A. E. Gillmor
Donahue, Iowa

Carl J. Mitzner
R. F. D.
Tipton, Iowa

P. H. Naber
Hershey Building
Muscatine, Iowa

Harry Imel
P.O. Box 486
Muscatine, Iowa

Harry J. Strong
1011 East High
Davenport, Iowa

First Iowa Hydro Electric Cooperative
Muscatine, Iowa

ROBERT H. WALKER,
Attorney for
Union Electric Power Company.

Subscribed and sworn to before me this 10th day of October, A. D., 1955.

(Notary Seal)

MICHAEL T. ORGAN,
Commissioner.

[fol. 112] (Order of Special Master amending Order on Motion of Plaintiffs to remove France, France & Nady, et al., as their Attorneys)

(Filed in U. S. District Court on October 11, 1955)

The order dated October 5, 1955, and made by the Special Master on the motion of plaintiffs for leave to remove their attorneys and on the resistance and application of said attorneys is hereby amended as follows:

Consistently with order for hearing and statements of the Special Master in the course of hearing, the following is added to said order:

Defendants took no part in the hearing which was ex parte as to them.

Dated October 10th, 1955.

EDWARD A. DOERR,
Special Master.

[fol. 113] (Motion of Plaintiffs to expunge from the Record the Order of the Special Master of October 5, 1955, on Motion of Plaintiffs to remove France, France & Nady, et al., as their Attorneys)

(Filed in U. S. District Court on October 17, 1955)

Now comes First Iowa Hydro Electric Cooperative, a corporation, Harry J. Strong, Harry Imel, Frank A. E. Gillmor, P. H. Naber and Carl J. Mitzner, individual plaintiffs in this action, the individual plaintiffs being all the members of the Board of Directors of First Iowa Hydro Electric Cooperative, the corporate plaintiff, and state unto the Court as follows:

1. That First Iowa Hydro Electric Cooperative is a corporation organized under, and existing by virtue of the laws of Iowa, and maintaining its principal office at Muscatine, Iowa.

2. That Frank A. E. Gillmor is President of the First Iowa Hydro Electric Cooperative and also a member of the Board of Directors of said Cooperative.

3. That Carl J. Mitzner is Vice President of the First Iowa Hydro Electric Cooperative and also a member of the Board of Directors of said Cooperative.

4. That Harry J. Strong is Secretary-Treasurer of said Cooperative and also a member of the Board of Directors of said Cooperative.

5. That Harry Imel is a member of the Board of Directors of said Cooperative.

[fol. 114] 6. That P. H. Naber is a member of the Board of Directors of said Cooperative.

7. That the hearing on October 3, 1955 was an ex parte hearing without proper notice ever being served on plaintiffs; that no plaintiff ever received a properly signed notice.

8. That on September 16, 1955, plaintiffs filed a Motion for leave to remove their attorneys; that the Court had notice plaintiffs were without attorneys.

9. That plaintiffs were not afforded adequate protection in the Order setting forth a hearing for October 3, 1955; that the Special Master was informed and knew that certain of the plaintiffs were in St. Paul, Minnesota before a Circuit Court of Appeals Judge at a time when said hearing was going on and that it was impossible for them to attend said hearing.

10 That said Order provides for fees in the sum of $200,000.00 which is not binding on defendants and which specifically could not have been proven up in the short period of the hearing; that proof of said fees is on an hourly basis using the customary and usual fees of the community in question, and the record does not support any proof of fees where two law firms come out with exactly the same hours and time consumed in said case.

11. That before the Court at the time of this hearing, was a resistance filed by the law firms of France, France & Nady and James R. McManus and Allan R. Shepherd, and also a Petition to Intervene by Seth Gooder, Joseph F. Condon and Lloyd Drexler; that an examination of the resistance and the Petition to Intervene shows that both documents were prepared in the light of one another; that the interests of the plaintiffs and the interests of Seth Gooder, Joseph F. Condon and Lloyd Drexler are opposed; that the petitioners to intervene acted with and testified for the attorneys of record for plaintiff.

[fol. 115] 12. That the Court has since dismissed the Petition to Intervene, but that the plaintiffs, on information and belief, understand the intervenors are now filing Involuntary Petition in Bankruptcy against the plaintiff corporation.

13. That it is quite apparent from the existing records referred to in this document that the accused attorneys and the intervenors are conspiring to appropriate this cause of action for themselves and in violation of the attorneys' duty toward their clients.

14. That plaintiffs' Motion for Leave to Remove Counsel filed with the Court on September 16, 1955 was a sworn Motion, wherein the plaintiff made affidavit as to the allegations; the resistance filed by the alleged counsel was not a sworn Motion.

15. That the hearing held on October 3rd contains no sworn testimony controverting the sworn pleadings of the plaintiffs, and the sworn pleadings of the plaintiffs must go as admitted; that the admission of the uncontroverted sworn pleadings of the plaintiffs is sufficient to deny the alleged attorneys any of the relief granted in the Order of October 5, 1955.

16. That said hearing was attended by defendants, whereas the Order is not binding on the defendant, yet attempts to bind the plaintiffs.

17. That said Order is in violation of the constitutional rights of the plaintiffs.

Wherefore, plaintiffs pray said Order be [exponged] from the record.

FIRST IOWA HYDRO ELECTRIC
COOPERATIVE,
By: Harry J. Strong,
Its Secretary-Treasurer.

F. A. E. Gillmor,
Carl J. Mitzner,
Harry J. Strong,
Harry Imel,
P. H. Naber.

[fol. 116] Resistance to Defendants' Motion to Dismiss and Application by Plaintiffs for Affirmative Relief.

(Filed in U. S. District Court on October 17, 1955)

Now comes First Iowa Hydro Electric Cooperative, a corporation, Harry J. Strong, Harry Imel, Frank A. E. Gillmor, P. H. Naber and Carl J. Mitzner, individual plaintiffs in this action, the individual plaintiffs being all the members of the Board of Directors of First Iowa Hydro Electric Cooperative, the corporate plaintiff, and state unto the Court as follows:

Division I.

1. That First Iowa Hydro Electric Cooperative is a corporation organized under, and existing by virtue of the laws of Iowa, and maintaining its principal office at Muscatine, Iowa.

2. That Frank A. E. Gillmor is President of the First Iowa Hydro Electric Cooperative and also a member of the Board of Directors of said Cooperative.

3. That Carl J. Mitzner is Vice President of the First Iowa Hydro Electric Cooperative and also a member of the Board of Directors of said Cooperative.

4. That Harry J. Strong is Secretary-Treasurer of said Cooperative and also a member of the Board of Directors of said Cooperative.

[fol. 117] 5. That Harry Imel is a member of the Board of Directors of said Cooperative.

6. That P. H. Naber is a member of the Board of Directors of said Cooperative.

7. That since September 2, 1955, plaintiffs in this action have been unrepresented by counsel in whom they had confidence; that the plight of plaintiffs since September 2, 1955 is more fully disclosed by a document known as "Petition for Writ of Mandamus and Injunction and Temporary Order Staying Proceedings in Civil No. 1-224" prepared for the United States Court of Appeals for the Eighth Circuit, St. Louis, Missouri, which is attached hereto and made a part of this Motion and hereinafter referred to as Exhibit (1) of this Motion.

8. That Exhibit D and Exhibit H of Exhibit (1) are proof that the Court knew of the plaintiffs' plight since September 2, 1955.

9. That Exhibit P of Exhibit (1) is an Order calling for hearings to resume on October 10, 1955 and is an Order dated September 28, 1955; that said Order, Exhibit P of Exhibit (1) was an Order issued when Exhibit D and Exhibit H of Exhibit (1) were still undisposed of by the Court.

10. That because Exhibit D and Exhibit H of Exhibit (1) had not been disposed of by the Court, no proper notice was ever issued setting a time for taking of deposition, nor could such a notice be properly served on the plaintiffs until the Court had disposed of Exhibit D and Exhibit H of Exhibit (1).

11. That plaintiffs have filed a Motion to [Exponge] the Order of October 5, 1955, and plaintiffs' Motion to [Exponge] the Order of October 5, 1955 has not been acted upon.

12. That plaintiffs never received a properly signed notice of any hearing.

[fol. 118] 13. That the Court was informed that plaintiff, Harry J. Strong, was unrepresented on October 10, 1955 and had been informed well prior to said hearing.

14. That plaintiffs have filed a Motion to [Exponge] the deposition of Harry J. Strong, which motion the Court has not as yet disposed of and which should be disposed of before the Court is in a position to consider a Motion to Dismiss on failure to testify.

15. That the acts of Harry J. Strong have not been willful acts as will be more clearly seen by reading Exhibit (1) which Exhibit requests that the Court stop the delaying tactics of defendants and set this case for a trial certain thirty (30) days after date when plaintiffs are allowed to retain counsel in whom they have confidence.

16. That the hearing of October 10, 1955 at 11:00 o'clock A. M., was at a time one hour and twenty-five minutes after plaintiff, Harry J. Strong, had filed an Affidavit of Bias and Prejudice; and that with the filing of the Affidavit of Bias and Prejudice, the Court was estopped from any action until the Court had complied with Court rules of Affidavits of Bias and Prejudice.

17. That the Court did not comply with any Court rules on an Affidavit of Bias and Prejudice prior to 11:00 o'clock A. M. on October 10, 1955; that without complying with any such rules the Court was not in a position to hold a hearing on October 10, 1955 at 11:00 o'clock.

18. That the Court has had numerous documents before it which clearly unfold the conspiracy between certain individuals who attempted to intervene in this action; and the plaintiffs and the Court well knew that the plaintiffs and the potential intervenors had adverse interests, and the Court well knew that the so called attorneys of record were working with the intervenors and against the interests

of plaintiffs, and the Court had a duty to protect plaintiffs [fol. 119] against the adverse interests of the so-called attorneys of record; that the Court failed in its duty toward plaintiffs, and failed more particularly in attempting to set a hearing for a day certain at a time when plaintiffs were unrepresented and before it could be determined whether new attorneys would have sufficient time to prepare themselves.

19. That Harry J. Strong is but one of six plaintiffs in this action; and although plaintiffs deny there was ever any wrongful act of Harry J. Strong, the acts of one plaintiff cannot control as to the other five plaintiffs, and the other five plaintiffs cannot be bound by the acts of one plaintiff in an action of this type.

20. That plaintiffs requested of the Master well before the hearing, and with sufficient time for the Master to inform all parties of any postponement; that a postponement would be necessary for the question of representation of the plaintiffs had to be finally determined before the plaintiffs could again testify.

21. That plaintiff, Harry J. Strong, called the Master by telephone on October 5, 1955 and so informed the Master of these facts.

22. That the attempt of a hearing on October 10, 1955, was an attempt to foreclose the plaintiffs from questioning an Order of October 5, 1955 on a question of attorneys, which Order was contrary to all laws and facts of such cases.

24. That the Master well knew that his hearing on the question of attorneys on October 3, 1955 was in error, for the plaintiffs in this action filed a Motion on September 16, 1955 to remove their attorneys, which Motion was a sworn pleading; that the resistance filed by the alleged attorneys of record was not a sworn pleading, and the Master should not have heard any testimony until a sworn resistance was filed in the Court, because the Motion and the resistance were directly contrary, and the Court should [fol. 120] have insisted upon sworn pleadings to maintain

the dignity of the Court and properly prosecute for perjury any perjurious statements.

25. That the Master failed in his duty toward these plaintiffs in not so insisting upon sworn pleadings in reply to a sworn Motion.

Wherefore, plaintiffs pray that Division I of defendants' Motion to Dismiss be [exponged] from the record.

Division II

Plaintiffs reaffirm and reallege paragraphs 1 through 8 of Division I as paragraphs 1 through 8 of Division II.

9. That Court Order of September 21, 1955 was a Court Order when plaintiffs had before the Court Exhibit D and Exhibit H of Exhibit (1).

10. That the Court had knowledge that plaintiffs were unrepresented when the Order of September 21, 1955 was issued, and the Court had failed to dispose of the matter contained in Exhibit D and Exhibit H of Exhibit (1) when the Court issued the Order of September 21, 1955.

11. That the Order of September 21, 1955 was an Order which contained more than one Order and is more particularly an Order ordering a Special Master and may be found as Exhibit L of Exhibit (1).

12. That said Order appointed a new Master to pass upon findings of fact and conclusions of law and called for the payment of certain moneys and allowed a Special Master to pay out certain sums; that said Order was in derogation of plaintiffs' rights in that there was no provision for examination into the qualifications of the Special Master; in that it granted to a Special Master certain determinations which are reserved for a jury, and the plaintiffs, in this action, have requested a jury action.

13. That it is the understanding of the plaintiffs that the original Order of the Court, before it was modified by a Mr. Bergstrom in an ex parte matter, called for the [fol. 121] defendants to pay the costs of deposition; and that it is the understanding of the plaintiffs that all parties

have a right to question the unreasonableness of any fees disbursed, and no such provision could be found in the Order of September 21, 1955.

14. That plaintiffs, being unrepresented as may be found by the Court's own record, were entitled to a hearing on this matter.

15. That plaintiffs filed a Motion to Defer the Deposit of Funds in Davenport, Iowa on September 26, 1955; that on September 26, 1955, Judge William F. Riley was not in Davenport, Iowa, but was in fact, in Des Moines, Iowa; that on the 27th day of September, 1955, without the benefit of a hearing, and with full knowledge that plaintiffs had filed Exhibit D and Exhibit H of Exhibit (1) with the Court, and that Exhibit D and Exhibit H of Exhibit (1) were undisposed of by the Court, Judge William F. Riley, in Des Moines, Iowa, issued an Order which is referred to in Division II of defendants' Motion to Dismiss.

16. That plaintiffs' Motion to Defer Deposit was filed at 2:40 o'clock P.M. on September 26, 1955; that it was quite apparent that the Court, in this action, was acting to forestall any exception being taken to the Orders even though they may be in derogation of the plaintiffs' rights.

17. That plaintiffs are a non-profit cooperative organized under the laws of the State of Iowa, and can only act in matters such as a deposit of $2,500.00 by an act of the Board of Directors of said cooperative; that plaintiffs had attempted to get counsel to examine the Order and advise them whether they should act upon the Order; that all attorneys contacted refused to pass upon the subject unless they could review the whole file in said case; that the Orders of this Court have been such where no attorney is allowed to examine the file unless he becomes an attorney of record; that consequently, plaintiffs were advised that no one would be able to advise them on this matter until the Court first finally determined the [fol. 122] question of plaintiffs' counsel; that as of today, plaintiffs are not in position to be fully advised on their rights in this matter.

18. That the Court has seen fit to freeze plaintiffs from obtaining legal advice from attorneys in whom they have confidence, and has seen fit to freeze counsel, i.e, plaintiffs with attorneys that the Court records of the Southern District of Iowa will well indicate are working "hand in glove" with certain individuals who are attempting to appropriate for their own use, plaintiffs' cause of action; and which acts indicate clearly that said attorneys have interests in conflict with the plaintiffs.

19. That Division II of defendants' Motion to Dismiss is in error in that it states that plaintiffs have ample funds, whereas the true facts are that said funds are being held in a trust capacity and allowed to be used only when fully advised as to their use by competent counsel; that until such time as the Court allows plaintiffs to retain competent counsel in whom they have confidence, plaintiffs are not in a position to deposit any funds or they would be violating their trust obligations toward the contributors.

Wherefore, plaintiffs pray that Division II of defendants' Motion to Dismiss be quashed.

Division III

Plaintiffs reaffirm and reallege each and every paragraph to be found in Division I and Division II as their resistance to Division III of defendants' Motion to Dismiss.

Wherefore, plaintiffs pray that Division III of defendants' Motion to Dismiss be quashed.

Plaintiffs' Application for Affirmative Relief

Now comes First Iowa Hydro Electric Cooperative, a corporation, Harry J. Strong, Harry Imel, Frank A. E. Gillmor, P. H. Naber and Carl J. Mitzner, individual plaintiffs in this action, the individual plaintiffs being all the members of the Board of Directors of First Iowa Hydro Electric Cooperative, the corporate plaintiff, and state unto the Court as follows:

[fol. 123] 1. That First Iowa Hydro Electric Cooperative is a corporation organized under, and existing by

virture of the laws of Iowa, and maintaining its principal office at Muscatine, Iowa.

2. That Frank A. E. Gillmor is President of the First Iowa Hydro Electric Cooperative and also a member of the Board of Directors of said cooperative.

3. That Carl J. Mitzner is Vice President of the First Iowa Hydro Electric Cooperative and also a member of the Board of Directors of said Cooperative.

4. That Harry J. Strong is Secretary-Treasurer of said Cooperative and also a member of the Board of Directors of said Cooperative.

That Harry Imel is a member of the Board of Directors of said Cooperative.

6. That P. H. Naber is a member of the Board of Directors of said Cooperative.

7. That since September 2, 1955, plaintiffs in this action have been unrepresented by counsel in whom they had confidence; that the plight of plaintiffs since September 2, 1955 is more fully disclosed by a document known as "Petition for Writ of Mandamus and Injunction and Temporary Order Staying Proceedings in Civil No. 1-224" prepared for the United States Court of Appeals for the Eighth Circuit, St. Louis, Missouri, which is attached hereto and made a part of this Motion and hereinafter referred to as Exhibit (1) of this Motion.

8. That Exhibit D and Exhibit H of Exhibit (1) are proof that the Court knew of the plaintiffs' plight since September 2, 1955.

9. That in Exhibit (1) on page 14 of same, plaintiffs prayed for the Court of Appeals to direct that the United States District Court of the Southern District of Iowa, Davenport Division be directed and commanded to [expunge] from the record all Orders issued since September [fol. 124] 2, 1955, and commanding that it set Civil action No. 1-224 for a trial within thirty days from the date of said Order; that plaintiffs still pray of this Court that this act be done:

10. That since the filing of Exhibit (1) with the Circuit Court of Appeals, the Court, on October 3, 1955 held a hearing wherein the petitioners to intervene, more particularly to be found in Exhibit U of Exhibit (1), and the alleged attorneys of record for plaintiffs worked hand in hand in support of one another where the petitioners to intervene and plaintiffs had a direct conflict of interest.

11. That because the alleged attorneys of record have worked with people and for people who have a direct conflict of interest and individuals that are now attempting to bankrupt the plaintiffs so they may appropriate this cause of action for their own use, plaintiffs' rights will be in jeopardy unless this Court sees fit to discharge the alleged attorneys of record.

13. That the plaintiffs of record have filed a Motion [expunge] a certain document called "Deposition of Harry J. Strong".

14. That on March 12, 1954, defendants in this action filed interrogatories, said interrogatories being attached hereto and made a part hereof and hereinafter referred to as Exhibit (2) of this pleading.

15. That on the 13th day of April, 1954, plaintiffs in this action filed their answers to said interrogatories; said answers being attached hereto and made a part hereof and hereinafter referred to as Exhibit (3).

16. That on the 9th day of July, 1954, the Court entered an Order requesting that the defendants plead to the plaintiffs' Complaint; said Order being attached hereto and made a part hereof and hereinafter referred to as Exhibit (4).

[fol. 125] 17. That this case is now at issue. That a certain document called "Deposition of Harry J. Strong", now contains 1957 pages and that said document is merely a [repitition] of plaintiffs' answers to the interrogatories, Exhibit (3).

18. That a certain document, "Deposition of Harry J. Strong", contains statements which indicate there are

unreported remarks, and therefore said document is not a true and correct copy of all proceedings.

19. That plaintiffs have been attempting to have this action tried since the issues were joined, and defendants are merely pulling stalling tactics in the hope they can break this non-profit cooperative.

20. That the original rules for discovery depositions were to allow people such as the plaintiffs, to find the full facts on such conspiracies such as the defendants have conspired against the plaintiffs in this action; that all facts of conspiracy, if there be one, are facts which have been known to the defendants from the day they first conspired; that the discovery deposition is not being used to discover anything except for the defendants to find out plaintiffs' contemplated procedure for proof of facts already known to the defendants.

21. That the discovery deposition of 1957 pages is on one witness alone, and the defendants have indicated they intend to continue on this same witness for at least another 1000 pages and then proceed with numerous other witnesses; that unless the Court steps in at this time and forces this case to trial, the plaintiffs will be denied their right to a fair and impartial trial.

22. That the cost in this suit has been prohibitively high because of the stalling tactics of the defendants in their modes of procedure.

23. That the defendants are corporations of unlimited funds and protected as a public utility with rates which guarantee a return regardless of expenditures.

24. That plaintiffs, being a non-profit cooperative formed under the laws of the State of Iowa, are, by the laws of the State of Iowa, men of farm background, and incorporated not for personal gain; being a non-profit cooperative, but as a public service to the State of Iowa.

25. That the plaintiffs have been harrassed in this action since 1938; have been compelled to go to the Supreme Court twice in gaining a Federal license and now have a

Federal license but because of conspiracy of defendants, they have been unable to build a project licensed by the Federal Government.

26. That the plaintiffs had exhaustive hearings on the feasibility of the project before the Federal Government, and the Federal Government granted a license after examining all facts on the feasibility of the project; that the question of feasibility of the project was determined by the Federal Power Commission, appealed up through the Courts of the United States up to the Supreme Court of the United States, and today defendants are attempting, through their depositions, questions and interrogatories, to again reopen a subject of the feasibility of this project, at great cost to the plaintiffs; and the defendants are, in reality, attempting to make this District Court an Appeal Court from the Supreme Court of the United States.

27. That unless the Court examines the complete file in this case and allows the plaintiffs a remedy as requested in Exhibit (1), plaintiffs will be denied the right to a fair and impartial trial for the plaintiffs readily admit unto the Court they cannot match funds dollar for dollar, with these wealthy defendants; that if, after examining Exhibit (2) and Exhibit (3) and the 1957 pages of a document called "Deposition of Harry J. Strong", defendants do not have sufficient knowledge to defend this action, it is quite apparent they will never have sufficient knowledge, and that it is also quite apparent they are not after sufficient knowledge, but merely using such tactics as their [fol. 127] strategy in keeping this matter away from a jury which was requested by plaintiffs.

28. That the actions of defendants in this action have become most vicious in that we are advised that a manager of a local branch of one of the defendants contacted one of the principal backers of this project to find out if that principal backer of this project could accept a subpoena for involuntary petition in bankruptcy filed by alleged intervenors, intervenors denied the right to intervene by this Court, in an action in bankruptcy filed in Council Bluffs, Iowa; that this contact between the defendants, and emanating from intervenors and conspired by the al-

leged attorneys of record for the plaintiffs, was made before any Court records of said bankruptcy were in the Court in Davenport, Iowa or any subpoena served in this action.

29. That unless the Court forces this case to trial, the conspiracy which was alleged in this Complaint apparently is continuing, and will continue until such time as plaintiffs are broken and unable to further pursue the action.

30. That on many occasions since the start of this action, defendants, or agents of defendants, have contacted witnesses of plaintiffs; that the Court, in allowing the stalling tactics of the defendants, is merely granting more time to the defendants to contact and to work on and to scheme against the witnesses for plaintiffs.

31. That plaintiffs have contacted good counsel, and if the Court would allow these counsel to appear of record, said counsel say they would be prepared to try said case within thirty days from their entrance of appearance.

32. That plaintiffs would like to take depositions on the defendants, but plaintiffs will forego this if the Court can see fit to actually try the case.

33. That in instances since the filing of this case, certain witnesses have been tampered with as will be found [fol. 128] in the document, "Deposition of Harry J. Strong".

34. That if this case is set for trial with the thirty day preparation by attorneys in whom plaintiffs have confidence, plaintiffs will pay into the registry of the Court their portion of the costs which may have accrued to date, if advised to do so by attorneys in whom they have confidence.

35. Plaintiffs have made this pleading exceedingly long because plaintiffs feel the Court should, at one time, examine all the records in this matter before making a decision one way or the other and more particularly, the plaintiffs feel each and every Order of the Court issued since September 2, 1955 should be closely examined and

that all document filed herein should be examined in the light of this pleading.

Wherefore, plaintiffs pray that all Orders issued since September 2, 1955 in this matter, be [exponged] from the record;

That the alleged attorneys of record be discharged because of their conspiracy against their clients;

That the plaintiffs be allowed to engage counsel in whom they have confidence;

That an Order issue from this Court so ordering that all Orders issued since September 2, 1955 be [exponged] from the record and that said Order further set forth that plaintiffs have the right to hire counsel in whom they have confidence and that said Order further state that trial be set for a day certain thirty days from the date of said Order.

FIRST IOWA HYDRO ELECTRIC COOPERATIVE

By Harry J. Strong
Its Secretary-Treasurer

F. A. E. Gillmor
Carl J. Mitzner
Harry J. Strong
Harry Imel
P. H. Naber

[fol. 129] State of
County of ss.

F. A. E. Gillmor, Carl J. Mitzner, Harry J. Strong, Harry Imel, and P. H. Naber, being first duly sworn, on oath, depose and say that they have read the foregoing petition by them subscribed and that the matters and things contained therein are true to the best of their knowledge and belief.

F. A. E. Gillmor
Carl J. Mitzner
Harry J. Strong
Harry Imel
P. H. Naber

Subscribed and sworn to before me this —— day of October, A. D. 1955.

Glenn A. Elston
Notary Public

[fol.130] (Order of District Court of Affidavit of Prejudice)

(Filed in U. S. District Court on October 21, 1955)

By its order of October 14, 1955, the court directed that the affidavit of prejudice directed against the judge of this court and filed by the plaintiff Harry J. Strong, on his own behalf and purportedly as a representative of all other individual plaintiffs and as an officer of the First Iowa Hydro Electric Cooperative, should come on to be heard today at 2:00 o'clock p. m., as to its timeliness and sufficiency.

Notice of this hearing was given by mailing a copy of the order to each of the plaintiffs and to their counsel of record, James D. France, X. C. Nady, J. R. McManus, and Allan R. Shepherd. Such notice has been duly given.

The affidavit charges that it is the belief of the affiant that the judge "has a personal bias and prejudice against our project, a hydro electric development on the Cedar River." The rest of the affidavit is devoted to a statement of the reasons for such belief.

Section 144 of Title 28 of U.S.C.A. permits the filing of an affidavit of bias or prejudice when the judge before whom the matter is pending has a personal bias or prejudice either against the parties plaintiff, or any of them, or in favor of adverse parties.

The authorities appear definitely to establish that my [fol. 131] power is limited to inquiring into the timeliness and sufficiency of the affidavit.

Accordingly, the affidavit has been so examined.

This action was filed February 18, 1954; the affidavit October 10, 1955. The court must find that it is not timely.

As to its sufficiency, the affidavit fails to meet the requirements of Section 144 of Title 28 as to the personal bias or prejudice, since that here charged is "against our project."

The affidavit is not sufficient for the added reason that it is not accompanied by a certificate of counsel of record stating that it is made in good faith. The affidavit of Harry J. Strong, attached, is not such a certificate.

It Is Therefore Ordered And Adjudged that the affidavit of bias and prejudice is neither timely nor sufficient and for other reasons fails to meet the requirements of Section 144 of Title 28 U.S.C.A.

It Is Therefore Further Ordered that proceedings in this cause shall be continued as though such affidavit had not been filed.

An exception is granted to those who deem themselves adversely affected by this ruling.

Signed at Des Moines, Iowa, this 21st day of October, 1955.

WM. F. RILEY,
United States District Judge.

[fol. 132] (Order of Special Master striking certain Papers filed by Plaintiffs from Files, etc.)

(Filed in U. S. District Court on October 28, 1955.)

This order is made on my own initiative.

In accordance with my order of October 24th, 1955, a hearing was held by me on October 28th, 1955, at 10:30 o'clock A. M., on the question whether an order substantially in the form of the present order should be entered. J. R. McManus, James D. France and X. C. Nady, attorneys of record for plaintiffs, appeared for plaintiffs. Plaintiffs, although themselves notified of said hearing, failed to appear in any other manner. The said attorneys of record for plaintiffs stated in substance that the papers filed by plaintiffs in this action and which are hereinafter spe-

cifically designated were made and filed wholly without consultation by plaintiffs with their said attorneys and wholly without the knowledge of said attorneys and that said attorneys remained wholly without instruction from the plaintiffs with reference to any proceedings to be taken in this action upon said papers. After making certain objections to my authority as special master (which were overruled), said attorneys stated they had nothing more to submit.

Certain attorneys for one of the defendants were present by my leave solely as observers and took no part in the hearing.

[fol. 133] Plaintiffs have filed in this action papers entitled as follows:—

Motion To [Exponge] A Document Called Deposition Of Harry J. Strong

Motion To [Exponge] From the Record Order Dated October 5, 1955, Said Order Pertaining To A Hearing On October 3, 1955.

Motion To [Exponge] From The Record An Order Dated October 11, 1955 And Order Pertaining To Motions To Dismiss And Hearing On Affidavit Of Prejudice.

Motion To [Exponge] An Order Of Judge William F. Riley Dated October 14, 1955 In Reference To Affidavit Of Prejudice.

Resistance To Defendants' Motion To Dismiss And Application For Affirmative Relief

Plaintiff Harry Imel has filed in this action a paper entitled as follows:—

Motion In Resistance To The Substitution Of Any Party Plaintiff

None of the papers referred to are signed by any attorney of record for plaintiffs as required by Rule 11 and Rule 7 (b) (2) of the Federal Rules of Civil Procedure. Plaintiffs claim to be unrepresented by any attorney. In

fact, their attorneys of record continue to represent plaintiffs actively, as established by the record.

The following further immediately relevant matters are established by the record, to wit:—

Plaintiffs filed in this matter a motion for leave to remove their attorneys, which has been treated as a motion for substitution of counsel; that motion was heard on October 3rd, 1955, pursuant to my prior order; such prior order granted leave to plaintiffs to be represented at the hearing of their motion by counsel of their own choosing; plaintiffs [fol. 134] although notified of the hearing, failed to appear in person or by counsel of their choosing; they also failed to apply for any postponement of the hearing; nevertheless by my order of October 5th, 1955, their motion was granted, although upon condition that they compensate their attorneys of record for services rendered; in spite of plaintiffs' failure to appear, my said order granted them leave to show a lack of means to perform the condition and to apply for a corresponding reduction in the amount to be paid by them to their attorneys; plaintiffs have failed to make any such application.

The following further immediately relevant matters are established by the record, to wit:—

On September 27th, 1955, the court entered in this matter its Order Denying Motion To Defer Requirement Of Deposit; that order directed plaintiffs, in conformity with a prior order of the court of date September 21st, 1955, to pay into the registry of the court the sum of $2500.00 as a condition to going forward with the action; said sum was not deposited by plaintiffs prior to their filing of the papers hereinbefore referred to and has not yet been so deposited.

It further appears of record that plaintiff First Iowa Hydro Electric Cooperative is a corporation wholly unrepresented by any attorney in connection with the filing of the papers hereinbefore referred to but purportedly represented therein solely by its lay officer, Harry J. Strong.

I state the following conclusions:—

The claim of plaintiffs that they are not represented by any attorney is frivolous.

The individual plaintiffs having been represented herein by their attorneys of record are not privileged also to proceed in this action without attorneys or as attorneys pro se, unless they shall first comply with my order of October [fol. 135] 5th, 1955, on their motion for leave to remove their attorneys.

The corporate plaintiff, First Iowa Hydro Electric Cooperative, can in no event proceed in this action in any manner except by an attorney, the corporation being incapable of acting as attorney pro se and its lay officer being incapable of acting as attorney for it.

The filing by plaintiffs of the papers referred to, if permitted to stand, would have the effect to nullify the court's order of September 27th, 1955, and my order of October 5th, 1955.

The filing by plaintiffs of the papers referred to, if permitted to stand, and the taking or entertaining by me of any proceedings based thereon, other than to strike the same from the files, would have the effect to encourage disorderly judicial procedure and the defiance of judicial orders.

It is ordered:

(1) The papers filed by plaintiffs and designated as above recited are stricken from the files and shall be physically removed from the files by the Clerk. The prior, formal filing of the papers shall be of no effect except as the papers constitute examples of breach of the applicable rules of procedure and of subsisting orders in this action.

(2) No pleading or motion which may be tendered by plaintiffs for filing and which shall not be signed by an attorney of record for plaintiffs in accordance with the above cited rules shall be filed or received by the Clerk, except as may be specifically provided by my later order or by order of the court.

(3) No pleading, motion or paper tendered by plaintiffs for filing shall be filed or received by the Clerk nor shall the plaintiffs be permitted in any other manner to go forward with the action unless plaintiffs shall first have paid

into the registry of the court the sum of $2500.00 in con-
[fol. 136] formity with the court's orders of September 21st, 1955, and September 27th, 1955. The plaintiffs are not by this section (3) precluded from acting in opposition or resistance to any action taken by defendants, provided that such action by plaintiffs shall be taken in conformity with this order generally.

(4) No pleading or motion which may be filed in this matter by defendants or any of them is required to be served on plaintiffs or any of them, except by means of service upon an attorney of record for plaintiffs in accordance with Rule 5 (b) of the Federal Rules of Civil Procedure and except as may be otherwise ordered by me or the court in accordance with said rule; provided that service upon plaintiffs themselves is not hereby prohibited.

5. No order which may hereafter be made in this matter shall be served by the Clerk on plaintiffs or any of them, except by means of service upon an attorney of record for plaintiffs in accordance with said Rule 5 (b) and except as may be otherwise ordered by me or the court in accordance with said rule; provided that defendants are not hereby prohibited from serving any order on plaintiffs themselves.

(6) This order shall be served by the Clerk by mail upon defendants by serving their attorneys and upon plaintiffs by serving their attorneys of record and plaintiff themselves.

Dated October 28th, 1955.

EDWARD A. DOERR,
Special Master.

[fol. 137] (Order of District Court for Payment of Fees to Special Master, Wayne G. Cook.)

(Filed in U. S. District Court on November 9, 1955.)

In accordance with the previous order of this Court dated October 24, 1955, allowing the statement of fees and

disbursements of Wayne G. Cook as Special Master, subject to the right of the Defendants to show cause on or before November 4, 1955, why such an allowance should not be paid, and it now appearing to the Court that the date for any of the participating Defendants to show cause in the premises has passed, and there being no objection filed, it is therefore—

Ordered that payment in the total amount of $3,043.38 covering the statement for fees and expenses of Wayne G. Cook while acting as Special Master, be paid by the Defendant Union Electric Power Company with the right of contribution from other participating Defendants, and that upon payment, an acknowledgement of such payment shall be made by the said Wayne G. Cook by endorsement on a copy of this order and thereafter filed in this cause.

WM. F. RILEY,
United States District Court Judge.

Payment of the amount provided in the foregoing Order of $3,043.38 is acknowledged this 10 day of November A. D.

WAYNE G. COOK.

[fol. 138] (Order of Special Master on Motion of Defendants to Dismiss)

(Filed in U. S. District Court on November 21, 1955)

This order is made on the Motions To Dismiss filed in this matter by defendants. The motions were heard, argued and submitted on the 18th day of November, 1955. Plaintiffs appeared by their attorneys of record, James R. McManus and James D. France. The plaintiff Harry J. Strong was present in person at the beginning of the hearing but left before argument. Defendant Union Electric Company appeared by Robert H. Walker, its attorney. Certain of the other defendants appeared by counsel and all of the defendants joined in a brief and argument filed with

me. This order will relate the important record facts, will make fact findings and will state conclusions. That procedure should make it more convenient for any party who may want a review to obtain one.

Harry J. Strong is one of the plaintiffs. He is an officer and the managing agent of another plaintiff, First Iowa Hydro Electric Cooperative.

The taking of the testimony of Harry J. Strong on deposition, at the defendants' instance, was begun long prior to October 10th, 1955, was continued over an extended period with a number of interruptions and, on the last mentioned [fol. 139] date, was due to be resumed pursuant to my order. At the time and place fixed for resumption of his testimony, Mr. Strong appeared and immediately announced his refusal to testify. He left the hearing room before there was any opportunity to question him. A full record of the incident was made by the court reporter who was in attendance.

In connection with his refusal to testify, Mr. Strong asserted that he was unrepresented by counsel and that there had been filed in the court an affidavit of prejudice.

The record facts on Mr. Strong's claim that he had no counsel are these:—Plaintiffs filed in this matter a motion for leave to remove their local attorneys of record, which has been treated as a motion for substitution of counsel; that motion was heard on October 3rd, 1955, pursuant to my prior order; such prior order granted leave to plaintiffs to be represented at the hearing of their motion by counsel of their own choosing; plaintiffs, although notified of the hearing, failed to appear in person or by counsel of their choosing; they also failed to apply for any postponement of the hearing; nevertheless by my order of October 5th, 1955 their motion was granted, although upon condition that they compensate their local attorneys of record for services rendered; in spite of plaintiffs' failure to appear, my order granted them leave to show a lack of means to perform the condition and further leave to apply for a corresponding reduction in the amount to be paid by them to their local attorneys; plaintiffs have failed to make any such application; in fact, plaintiffs' local counsel

of record have continued at all times in the active representation of plaintiffs; further, plaintiffs have never moved to discharge their counsel of record who reside outside of the district.

I find that the services of such nonresident counsel, as well as local counsel, have been available to Mr. Strong (and to the plaintiffs generally) at all times.

The record facts on Mr. Strong's reference to an affidavit [fol. 140] of prejudice are these:—The affidavit of prejudice was filed by Mr. Strong on October 10th, 1955, less than two hours before the scheduled resumption of his testimony on deposition; it asserted prejudice on the part of Judge William F. Riley, presiding in this court and action; the affidavit was wholly insufficient in substance; it was not timely filed; no affidavit of counsel was attached as required by statute; it was in effect stricken from the files by order of the court on October 21, 1955.

Division I and Division III, paragraph 1, of the motions to dismiss are based on Mr. Strong's refusal to testify (considered, in the first case, under Rule 37 (d), as a failure to appear for deposition in response to notice, and, in the second case, under Rule 41 (b), as a violation of the court's order to appear for deposition).

The motions also charge against all of the plaintiffs their failure to comply with the court's orders. The orders referred to, dated September 21st and September 27th, 1955, required the plaintiffs, as well as the defendants, to pay into the registry of the court the sum of $2500 as a fund from which the costs of reference might be paid. The defendants have made the required payment. The plaintiffs have wholly failed to do so, although payment was required to be made forthwith by the initial order. The second order was entered in consequence of a motion to defer the deposit, made by plaintiff Harry J. Strong on his own behalf and purportedly as a representative of all other plaintiffs. The grounds of the motion to defer were that plaintiffs were without counsel. (The record facts and my findings on this assertion have been stated.) The motion to defer did not assert any inability to make the required deposit and

the plaintiffs have never in any other way asserted their inability. The second order confirmed the initial one and required the deposit to be made by plaintiffs as a condition to the going forward with their action.

[fol. 141] Division II and Division III, paragraph 2, of the motions to dismiss are based on plaintiffs' failure to make the $2500 payment so required. The basis in law is, in the one case, the court's inherent power to regulate its own procedure by dismissal for disobedience of its order, and, in the second case, a like power under Rule 21 (b).

In addition to the specific grounds of the motions to dismiss, the record discloses numerous other instances of disorderly and irregular procedure taken by the plaintiffs personally, that is (so far as the record shows) independently of counsel.

I regard the refusal of the plaintiff Harry J. Strong to testify in the incident which has been recited as a failure on his part to appear for deposition in response to notice. I also regard such refusal as a failure to comply with my order and with orders made directly by the court for the resumption of Mr. Strong's deposition. I find that such refusal to testify was flagrant, wilful and without justification or excuse. I find that such refusal has had the necessary effect of disrupting orderly procedure in this action and of hampering defendants in making their defense.

Considering my finding of the character and effect of the violations, I conclude that the only appropriate sanction is dismissal and the only appropriate kind of dismissal is a dismissal operating as an adjudication upon the merits.

The penalty is the most extreme which can be imposed. So far as can be judged from the amount claimed, this suit is an important one. It is also important from the viewpoint that it seeks to vindicate a private right allegedly arising under the anti-trust laws which also announce and enforce a public policy. It is possible that Mr. Strong has relied on advice from an unknown source. For these reasons (coupled with the view that in case of doubt any suggestion of the arbitrary should be avoided) I conclude that

a dismissal should be ordered to be effective only after [fol. 142] extending a last chance to Mr. Strong to resume his deposition.

An order of dismissal on account of Mr. Strong's refusal to testify can of course operate only against him and the plaintiff First Iowa Hydro Electric Cooperative, of which he is an officer and managing agent.

The degree of solicitude shown for plaintiffs Harry J. Strong and First Iowa Hydro Electric Cooperative by this order should not be considered by any party as establishing a precedent.

Bankruptcy proceedings are pending against First Iowa Hydro Electric Cooperative. A receiver has been appointed in those proceedings. The order for dismissal should provide an opportunity to consider the position of the receiver (or of a trustee in bankruptcy) in the event that he comes into the action.

I turn to those parts of the motions which ask dismissal because of plaintiffs' failure to make the required $2500 deposit. I find that the failure by plaintiffs to comply with the order for such deposit is flagrant, wilful and without justification or excuse. I find that the effect of such failure has not been to disrupt orderly procedure in this action in any material degree and has not been to hamper defendants in making their defense. The court's order of September 27th, 1955, provided a sanction for plaintiffs' failure to comply with that same order by preventing them during the period of such failure, from going forward with their action. That sanction was made more specific in operation by my order of October 28th, 1955. Defendants have suffered only by making a contribution which plaintiffs have not matched as required. I do not make light of the inequality. I conclude, however, that the existing sanction is an adequate compensating advantage. Under that sanction, plaintiffs can not proceed against defendants until plaintiffs come into compliance; the defendants however can proceed freely to prepare their defense.

I conclude that the action should not be dismissed for [fol. 143] failure of plaintiffs to make the required $2500 deposit. The failure to make the required deposit may,

however, have a different aspect in future circumstances. The denial of the motion, so far as based on the grounds now considered, should therefore be without prejudice to renewal at a later date.

It is ordered:—

1. The taking of the deposition of the plaintiff Harry J. Strong pursuant to Rules 28 and 30 of the Federal Rules of Civil Procedure and prior orders in this matter, which proceeding was interrupted by the refusal of the said Harry J. Strong to testify on October 10th, 1955, will be resumed on December 6th, 1955, at 11:00 o'clock A. M. at 725 Davenport Bank Building, Davenport, Iowa.

2. The plaintiff Harry J. Strong is ordered to appear at the time and place stated in paragraph 1 and then and thereafter in the regular course of procedure to submit to the taking of his deposition.

3. In the event that the said Harry J. Strong shall fail to comply with the foregoing order, then Division I and Division III, paragraph 1, of the Motions To Dismiss of defendants will be granted as against plaintiffs Harry J. Strong and First Iowa Hydro Electric Cooperative and an order of dismissal supplementary to this order will thereupon be made without any further notice or hearing; provided that the foregoing shall be without prejudice to the consideration of any application which, prior to the making of such supplementary order, may be filed in this matter by a receiver or trustee in bankruptcy of plaintiff First Iowa Hydro Electric Cooperative.

4. Division II and Division III, paragraph 2, of the Motions To Dismiss of defendants are denied without prejudice to the renewal thereof at any time.

This order will be served by the clerk by mail, in the case of defendants by serving their attorneys of record,

and in the case of plaintiffs by serving their attorneys of [fol. 144] record and the plaintiffs themselves.

Dated November 21st, 1955.

EDWARD A. DOERR,
Special Master.

[fol. 145] (Order of Special Master amending Order of November 29, 1955, with reference to the Resumption of taking of Deposition of Plaintiff, Harry J. Strong, etc.)

(Filed in U. S. District Court on December 2, 1955)

This order is made pursuant to Rule 60 (a) upon my own initiative, although in compliance with the informal suggestion of plaintiffs' attorneys.

The order made by me of date November 29th, 1955, with reference to the resumption of the taking of deposition of the plaintiff Harry J. Strong is amended by adding thereto the following which was omitted from the order by reason of oversight, to-wit:—

In making the application for delay herein referred to plaintiffs, by their attorneys of record, have expressly reserved the objections to the order of reference herein which are asserted upon constitutional grounds and which have been stated at the several hearings in which plaintiffs have taken part following the appointment of the present special master.

Dated December 1, 1955.

EDWARD A. DOERR,
Special Master.

[fol. 146] (Order of Special Master dismissing Cause as to Plaintiffs, Harry J. Strong and First Iowa Hydro Electric Cooperative.)

(Filed in U.S. District Court on December 22, 1955.)

In The United States District Court
For The Southern District Of Iowa
Davenport Division

First Iowa Hydro Electric Cooperative, et al.,
Plaintiffs,
No. 1-224 vs. Civil Action.
Iowa-Illinois Gas And Electric Company, et al.,
Defendants.

My order dated November 21, 1955, made on the Motions To Dismiss of defendants, provided in part as follows:

1. The taking of the deposition of the plaintiff Harry J. Strong pursuant to Rules 28 and 30 of the Federal Rules of Civil Procedure and prior orders in this matter, which proceeding was interrupted by the refusal of the said Harry J. Strong to testify on October 10th, 1955, will be resumed on December 6th, 1955, @ 11:00 o'clock A. M. at 725 Davenport Bank Building, Davenport, Iowa.

2. The plaintiff, Harry J. Strong, is ordered to appear at the time and place stated in paragraph 1 and then and thereafter in the regular course of procedure to submit to the taking of his deposition.

3. In the event that the said Harry J. Strong shall fail to comply with the foregoing order, then Division I and Division III, paragraph 1, of the Motions To Dismiss of defendants will be granted as against plaintiffs Harry J. Strong and First Iowa Hydro Electric Cooperative and an order of dismissal supplementary to this order will thereupon be made without any further notice or hearing.

My order dated November 29, 1955, provided that the taking of the deposition of Harry J. Strong should be resumed on December 20, 1955, at 11:00 o'clock A. M. instead of December 6, 1955.

On December 20, 1955, the plaintiff Harry J. Strong attended as required by the earlier orders referred to above but explicitly refused to testify. He was informed by me that the consequence of his refusal would be the entry by me of an order of dismissal of this action, in so far as brought by him and First Iowa Hydro Electric Cooperative. In response he merely stated his understanding of that consequence.

Supplementing my said order dated November 21, 1955, and in conformity with that order, it is ordered that this action be and the same hereby is dismissed as to plaintiffs Harry J. Strong and First Iowa Hydro Electric Cooperative, such dismissal to operate as an adjudication upon the merits.

This order will be served by the clerk by mail, in the case of defendants by serving their attorneys of record, and in the case of plaintiffs by serving their attorneys of record and plaintiffs themselves.

Dated December 22, 1955.

EDWARD A. DOERR,
Special Master.

[fol. 147] (Petition of Plaintiff, First Iowa Hydro Electric Cooperative, and Individual Plaintiffs for Review.)

(Filed in U. S. District Court on January 3, 1956.)

United States District Court
Southern District Of Iowa
Davenport Division

First Iowa Hydro Electric Cooperative, et al.,
Plaintiffs,
No. 1-224. vs. Civil.
Iowa Illinois Gas & Electric Company, et al.,
Defendants.

Come now the plaintiff First Iowa Hydro Electric Cooperative, and the individual plaintiffs in the above entitled cause and their Attorneys of Record in said cause in

behalf of the plaintiffs, and in behalf of the Attorneys of Record, personally and individually, and as such Attorneys of Record for plaintiffs in said cause, and respectfully petition this court to review an order made by Edward A. Doerr, Special Master, in said cause, on December 22, 1955, dismissing said cause, with prejudice, and to revise said order, vacate it, and set it aside for the following reasons and upon each of the following grounds.

(1) The Special Master had no power, authority, or jurisdiction to make such an order for the reason that the order made on September 21, 1955, appointing the Special Master, was illegal and void and amounted to an abuse of discretion upon the part of the United States District Judge who made the order, in view of the fact that a timely and proper demand for a jury trial had been filed in this cause by plaintiffs, the effect of the order appointing the Special Master was to effectually deprive the plaintiffs and their Attorneys of Record of a jury trial and the right to present all of their evidence to a jury, in violation of the right to a jury trial guaranteed to them by the pro- [fol. 148] visions of the Seventh Amendment to the Constitution of the United States and resulted in a denial to plaintiffs and their counsel, who have an interest in the subject matter of the litigation, of due process of law in violation of the rights guaranteed them by the provisions of the Fifth amendment to the Constitution of the United States. The result of the attempted reference to the Special Master was in contravention of the rights of plaintiffs and their Attorneys of Record under both the Seventh and Fifth amendments to the Constitution of the United States. The order appointing the Special Master constituted an abuse of discretion upon the part of the United States District Court for the Southern District of Iowa, and the Special Master had no power or authority or jurisdiction to act under the facts and circumstances revealed in the whole record, this being an action for triple damages for violation of the Sherman and Clayton Acts, the order referring the entire case to the Special Master violated the provisions of Rule 53 (b) which provides that "a reference to a Master shall be the exception and not the rule" and that in jury cases "a reference shall be made only when the issues are complicated." There is nothing complicated about the

issues in this case. A demand for jury was timely made. Therefore, there should not have been a reference of the case to a Special Master, who is attempting to perform the duties and functions of the court, in violation of the rights of these plaintiffs and their Attorneys of Record, for the reasons hereinbefore set forth.

(2) Even if the order appointing the Special Master were valid and he had the power to act, still, he would have no power, authority, or jurisdiction under Rule 37 of the Federal Rules of Civil Procedure or any other of said rules to dismiss the above entitled cause as such action would amount to usurping the power and function reserved only to and vested in the court. Therefore, the order made by the Special Master attempting to dismiss the case, with prejudice, with respect to the plaintiff Corporation and the plaintiff Harry J. Stong was in excess of his jurisdiction [fol. 149] and void as he was not vested with the power to dismiss the case, as the court, only, would have the power to dismiss the case.

(3) Even if the Special Master had jurisdiction to enter an order dismissing the above entitled cause, with prejudice, his drastic action under the facts and circumstances disclosed by the record in this cause, constituted an abuse of discretion and was arbitrary and a violation of the rights of plaintiffs and their Attorneys of Record who have an interest in the subject matter of the law suit.

(4) That the principal assets of the Corporation Plaintiff, First Iowa Hydro Electric Cooperative, consist of the license to construct the Moscow dam on the Cedar River, issued by the Federal Power Commission and this pending law suit. That to dismiss as to the corporation plaintiff this law suit in which four other individual plaintiffs are interested and involved because of the refusal of one individual plaintiff to give testimony in connection with a discovery deposition is an abuse of discretion on the part of the Special Master, would penalize the other four individual plaintiffs and their Attorneys of Record in this case, who are powerless to protect themselves in the premises, and amounts to a deprivation of property without due process of law as to all plaintiffs, and their Attorneys of Record, in violation of the provisions of Section 1 of the Four

teenth Amendment to the Constitution of the United States and would amount to a denial to said persons of equal protection of the laws as guaranteed to them by Section I of the Fourteenth Amendment and due process of law guaranteed to them by the Fifth Amendment to the Constitution of the United States.

(5) The Attorneys of Record for plaintiffs in this law suit, as shown by prior proceedings in this court, have an interest in the subject matter of the litigation by reason of the nature and effect of their contract of employment, time, work, and effort that they have expended on the case. Therefore, the order of the Special Master attempting to dismiss [fol. 150] the case with prejudice, with respect to the plaintiff corporation and Harry J. Strong deprives these Attorneys of Record of their rights and interests in violation of the provisions of Section I of the Fourteenth Amendment to the Constitution of the United States guaranteeing due process of law and in violation of the rights guaranteed said Attorneys of Record for plaintiffs by the provisions of the Fifth Amendment to the Constitution of the United States and would amount to the infliction of a penalty upon these Attorneys of Record for plaintiffs who have been guilty of no wrong doing or dereliction of duty in behalf of their clients in this case and would effectively deprive them of a substantial right and interest to successfully prosecute this law in behalf of all plaintiffs and their Attorneys of Record, to a final conclusion.

(6) At all times since the above entitled cause was instituted the Attorneys of Record for plaintiffs have to the best of their ability attempted to diligently and loyally protect and safe guard the rights and interests of all plaintiffs, at every stage of the proceedings. That the action of the Special Master in attempting to dismiss, with prejudice, the cause of action as to the plaintiff corporation and Harry J. Strong would constitute an arbitrary abuse of discretion, if he had the power to act at all, and would inflict a penalty upon Attorneys of Record, possessing an interest in the subject matter of the case, who have been without fault and entirely blameless in the conduct of the litigation in behalf of said Corporation plaintiff and all individual plaintiffs in the case. Upon each occasion when these Attorneys

of Record for plaintiffs appeared before the Special Master in connection with any proceedings in the cause, following his appointment, they have prior to the commencement of each proceeding, protested and objected to proceeding be- [fol. 151] fore the Special Master for the reasons and upon the grounds dictated into the record upon each of those occasions and questioned the right of the United States District Court to appoint a Special Master in this cause and have at every stage of the proceedings since his appointment challenged the legality and validity of the order appointing the Special Master and his acts and proceedings under and by virtue of said order.

Respectfully submitted,

JAMES D. FRANCE,

XAVIER C. NADY,
France, France & Nady,
First National Bank Building,
Tipton, Iowa.

JAMES R. McMANUS,

ALLAN R. SHEPHERD,
417 Fleming Building,
Des Moines, Iowa,
Attorneys for Plaintiffs.

[fol. 152] Report of Special Master.

(Filed in U. S. District Court on January 4, 1956)

To The Court:

Edward A. Doerr, having been appointed Special Master herein by order of the court dated September 21st, 1955, submits this report as such Special Master, and so respectfully states:

1. In the course of proceedings on reference, the deposition of plaintiff Harry J. Strong was scheduled to be taken, pursuant to Rules 28 and 30 of the Federal Rules of Civil Procedure on October 10th, 1955. At the time and

place fixed for such taking the said plaintiff was present but refused to testify and, after announcing such refusal and against the advice and urging of the Special Master, left the room and place fixed for such taking.

2. Defendants on the same day filed with the Special Master their Motions To Dismiss (the same being filed in the office of the Clerk under date of October 11th, 1955). Said Motions To Dismiss were in part based upon such refusal by plaintiff Harry J. Strong to testify.

3. The Special Master on November 21st, 1955, made an order on said Motions To Dismiss. In so far as such order related to the refusal by plaintiff Harry J. Strong to testify the order provided, in substance (and as thereafter modified with respect to the date only) as follows:

(a) That the taking of the deposition of said plaintiff should be resumed on December 20th, 1955.

(b) That plaintiff was required then to appear and submit to the taking of his deposition.

(c) That failing compliance with the foregoing, the said Motions To Dismiss should be granted as against plaintiffs Harry J. Strong and First Iowa Hydro Electric Cooperative only (the said Harry J. Strong being an officer and managing agent of said First Iowa Hydro Electric Cooperative).

[fol. 153] 4. On December 20th, 1955, at the time and place so fixed for the resumption of the taking of his deposition, the said Harry J. Strong was present but again stated his refusal to testify.

5. On December 22nd, 1955, because of such refusal, the Special Master, by order supplementing his order dated November 21st, 1955, dismissed this action as to plaintiffs Harry J. Strong and First Iowa Hydro Electric Cooperative, stating that such dismissal should operate as an adjudication upon the merits.

6. The findings of fact and conclusions of law of the Special Master which are material to this report are stated

in said orders of November 21st, 1955, and December 22nd, 1955, which orders are on file in the office of the Clerk and, together with said Motions To Dismiss, are made a part of this report.

7. Filed herewith are transcripts of certain proceedings and evidence in hearings before the Special Master which are, or may be urged by one or another of the parties to be, material to this report. Such transcripts are entitled in this action and are identified by mark and reference to the subject matter as follows:

"Exhibit 1 to Report of Special Master"—proceedings and evidence on hearing of motion by plaintiffs for leave to remove their attorneys.

"Exhibit 2 to Report of Special Master"—proceedings on October 10, 1955, in connection with scheduled taking of deposition of plaintiff Harry J. Strong.

"Exhibit 3 to Report of Special Master"—further proceedings on October 10, 1955, in such connection.

"Exhibit 4 to Report of Special Master"—proceedings of November 10, 1955, prior to argument of defendants' motions to dismiss.

"Exhibit 5 to Report of Special Master"—proceedings on December 20, 1955, in connection with scheduled resumption of the taking of deposition of plaintiff Harry J. Strong.

The transcripts so marked and identified are made a part of this report. The Special Master certifies that said transcripts truly state the proceedings and evidence which they purport to state and include a record of all proceedings and evidence before the Special Master, to the extent material to this report. All written orders made in the course of the reference by the Special Master have been filed in the office of the Clerk and all written applications made by the parties during the course of such reference have been so filed. To the extent that such orders and applications are, or may be urged by any party to be, material to this report, they are made a part of the report.

8. Said orders of November 21st, 1955, and December 22nd, 1955, are necessarily subject to confirmation by the Court upon its consideration of this report. Otherwise said orders are final as to plaintiffs Harry J. Strong and First Iowa Hydro Electric Cooperative. Because of such final [fol. 154] nature of said orders, the Special Master presently submits this report in relation to said orders, at the same time reserving (subject to the pleasure of the Court) for further proceedings, to be had pursuant to the Court's said order dated September 21st, 1955, all other matters referred to the Special Master by the Court's said order.

The Special Master respectfully recommends that the said orders made by the Special Master dated November 21st, 1955, and December 22nd, 1955, be confirmed and this report approved.

EDWARD A. DOERR,
Special Master.

[fol. 155] (Motion of Defendant, Union Electric Power Company, to Dismiss, and Joinder by Other Defendants)

(Filed in U. S. District Court on January 10, 1956)

Division I.

Defendant Union Electric Power Company, through its attorney, Robert H. Walker, moves the Court pursuant to Rule 37(d) of the Federal Rules of Civil Procedure for an order dismissing the Complaint of the Plaintiff, F. A. E. Gillmor, against these Defendants upon the following grounds:

1. For the willful failure and refusal of F. A. E. Gillmor as Plaintiff, and as President and Director of Plaintiff First Iowa Hydro Electric Cooperative to testify at the time set by the Special Master for the taking of his deposition, which order provided for the taking of said deposition at 11:00 o'clock A. M. on January 10, A. D., 1956, proper notice thereof having been previously given to the said F. A. E. Gillmor, and for the willful action of said F. A. E. Gillmor in refusing to testify and leaving the

hearing room, and in refusing to remain to be interrogated, and for the willful refusal of said F. A. E. Gillmor to testify after being advised by the Special Master so to do.

Division II.

Defendant Union Electric Power Company through its attorney, Robert H. Walker, moves the Court for an order [fol. 156] dismissing the Complaint of the Plaintiff F. A. E. Gillmor, against these Defendants, upon the following ground:

1. For the failure of the Plaintiff F. A. E. Gillmor to deposit into the registry of this Court the sum of $2,500 pursuant to court orders entered September 21, 1955, and September 27, 1955, although the record affirmatively shows that this plaintiff had ample time within which to make such deposit and to comply with such orders.

Division III.

Defendant Union Electric Power Company through its attorney, Robert H. Walker, moves the Court, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure to dismiss this action as to Plaintiff F. A. E. Gillmor for failure of the Plaintiff to prosecute the action, or to comply with the Federal Rules in Civil Procedure or the orders of the Court in the following respects:

1. For the willful failure and refusal of said F. A. E. Gillmor, as plaintiff, and as President and Director of Plaintiff First Iowa Hydro Electric Cooperative to testify at his deposition, noted to be taken on January 10, 1956, at Room 725 of the Davenport Bank Building, in accordance with the Order of the Special Master, proper notice thereof having been previously given to the said F. A. E. Gillmor, and for the willful action of the said F. A. E. Gillmor in leaving the hearing room and in refusing to remain to be interrogated in accordance with the Order of the Special Master, and for the willful refusal of said F. A. E. Gillmor to testify after having been advised by the Special Master so to do.

2. For the failure of the plaintiff, F. A. E. Gillmor to deposit into the registry of this Court the sum of $2,500 pur

suant to court orders entered September 21, 1955, and September 27, 1955, although the record in this case affirmatively shows that plaintiff had ample time within which to make such deposit and to comply with such orders.

[fol. 157] Division IV.

Defendant Union Electric Power Company, through its attorney Robert H. Walker, moves the Court, pursuant to Rules 37(d) and 41(b) of the Federal Rules of Civil Procedure to dismiss the Complaint of the Plaintiff First Iowa Hydro Electric Cooperative on the following additional grounds:

1. For the willful failure and refusal of F. A. E. Gillmor, as President, officer and director of the Plaintiff First Iowa Hydro Electric Cooperative, to testify at the taking of his deposition, although the said F. A. E. Gillmor was given notice of the time and place of the said hearing by the Special Master, and which said hearing was to be held on January 10, 1956, at 11:00 o'clock A. M., in Room 725 of the Davenport Bank Building.

2. For the failure of F. A. E. Gillmor, as President of First Iowa Hydro Electric Cooperative, to cause the Cooperative to deposit into the registry of this Court the sum of $2,500 pursuant to court orders entered September 21, 1955, and September 27, 1955, although the record in this case affirmatively shows that Plaintiff First Iowa Hydro Electric Cooperative had ample funds with which to make such deposit and had adequate time in which to comply with such orders.

3. For the willful refusal of said F. A. E. Gillmor to testify as President, officer and director of First Iowa Hydro Electric Cooperative, although directed so to do by the Special Master on January 10, 1956, at 11:00 o'clock A. M. at the time of said hearing.

Defendant Union Electric Power Company requests the Court in making any orders of dismissal to make such dismissal with prejudice as against plaintiffs, and all of them, and requests the Court to assess all costs against the plaintiffs and each of them.

Defendant Union Electric Power Company further requests that the foregoing matters be set for hearing upon notice to plaintiffs and their attorneys of record as the [fol. 158] Court may prescribe.

UNION ELECTRIC POWER COMPANY,
By Robert H. Walker,
Its Attorney.

Joinder by Other Defendants.

The Undersigned defendants, having been required by Order of Court entered May 16, 1955, to participate in taking of depositions noticed by defendant, Union Electric Power Company, including the taking of the deposition of F. A. E. Gillmor and now having been deprived of that right, join in and adopt in all particulars the foregoing motions to dismiss of defendant Union Electric Power Company.

IOWA-ILLINOIS GAS AND ELECTRIC COMPANY,
By Larned A. Waterman, Its Attorney.

IOWA POWER AND LIGHT COMPANY,
By Howard Steele, Its Attorney.

IOWA SOUTHERN UTILITIES COMPANY,
By Robert Valentine, Its Attorney.

INTERSTATE POWER COMPANY,
By E. Marshall Thomas, Its Attorney.

KANSAS CITY POWER AND LIGHT COMPANY,
By Joseph J. Kelly, Jr., Its Attorney.

IOWA ELECTRIC LIGHT AND POWER COMPANY,

NORTHWESTERN LIGHT AND POWER COMPANY,
By V. C. Shuttleworth, Their Attorney.

IOWA PUBLIC SERVICE COMPANY,
By Myron L. Sifford, Its Attorney.

IOWA UTILITIES ASSOCIATION,
By Sherman J. Markman, Its Attorney.

[fol. 159]

Acknowledgment of Service.

The undersigned acknowledges receipt of copy of the foregoing this 10th day of January, 1956.

JAMES R. McMANUS.
Attorney of record for Plaintiff.

In the United States District Court for the Southern District of Iowa, Davenport Division.

Affidavit of Service.

I, Robert H. Walker, one of the attorneys for Union Electric Power Company, depose and state that I served a copy of the foregoing motions by depositing a copy of the same in the United States mail to the last known address to the following persons, and at the following addresses, on January 10, 1956:

F. A. E. Gillmor
Donahue, Iowa

Carl J. Mitzner
R. F. D.
Tipton, Iowa

P. H. Naber
Hershey Building
Muscatine, Iowa

Harry Imel
P.O. Box 486
Muscatine, Iowa

Harry J. Strong
1011 East High
Davenport, Iowa

First Iowa Hydro Electric Cooperative
Muscatine, Iowa

ROBERT H. WALKER,
Attorney for
Union Electric Power Company.

Subscribed and sworn to before me this 10th day of January, A. D., 1956.

(Seal) DONALD H. SITZ,
Notary Public.

[fol. 160] (Order of Special Master on Motion of Defendants to Dismiss)

(Filed in U. S. District Court on January 16, 1956)

The Motions to Dismiss made by defendants and filed January 10th, 1956, are heard by me this date, pursuant to my prior order, of which notice has been duly given. Plaintiffs and defendants appear as recited in stenographic record of the instant hearing.

The motions are in four divisions and certain subdivisions, stating the following essential grounds:—

Division I—Motion to dismiss as to plaintiff F. A. E. Gillmor, made pursuant to Rule 37 (d), by reason of his refusal to testify on deposition, such refusal being considered as, in effect, a failure to appear.

Division II—Motion to dismiss as to the same plaintiff, without reference to any specific rule, by reason of his failure to make a deposit of $2,500 in conformity with orders of the court.

Division III, subdivision 1—Motion to dismiss as to the same plaintiff, made pursuant to Rule 41 (b), by reason of such refusal to testify.

Division III, subdivision 2—Motion to dismiss as to the same plaintiff, made pursuant to Rule 41 (b), by reason of his failure to make such deposit.

Division IV, subdivisions 1 and 3—Motion to dismiss as to plaintiff First Iowa Hydro Electric Cooperative, made pursuant to Rules 37 (d) and 41 (b) by reason of the refusal of F. A. E. Gillmor, president and director of the cooperative, so to testify.

Division IV, subdivision 2—Motion to dismiss as to the [fol. 161] plaintiff cooperative, made pursuant to Rule

41 (b), by reason of the failure of F. A. E. Gillmor, president of the cooperative, to cause the cooperative to deposit the $2,500 sum above referred to.

The record discloses that on January 10th, 1956, the plaintiff F. A. E. Gillmor was present at the time and place duly fixed for the taking of his testimony in discovery deposition proceedings in this cause; that when called up to be sworn he asked to be excused from testifying; that, upon being advised by me that he could not be excused but was required to testify, he read a statement of refusal to testify; that he thereupon left the room and place provided for the taking of his testimony.

The incident of refusal is essentially a repetition, with a difference in the actor only, of an earlier incident of refusal to testify by plaintiff Harry J. Strong. In that incident the plaintiff Strong refused to testify on October 10th, 1955; in consequence of such refusal, I, on November 21st, 1955, ordered the case dismissed as to him and First Iowa Hydro Electric Cooperative, subject, however, to a provision giving the plaintiff Strong a further and final opportunity to testify at a future time then fixed; at the time so fixed, the plaintiff Strong adhered to his refusal to testify; in consequence of such continued refusal, I, on December 22nd, 1955, confirmed the order of dismissal made by me on November 21, 1955.

Notice of the motion to dismiss as to plaintiffs Strong and First Iowa Hydro Electric Cooperative was duly given to plaintiff F. A. E. Gillmor, and my orders of November 21st, 1955, and December 22nd, 1955, were served on him so that he had ample time before January 10th, 1956, within which to consider his own course and the consequences of a refusal on his part to testify. My order of November 21st, 1955, provided in part:—

"The degree of solicitude shown for plaintiffs Harry J. Strong and First Iowa Hydro Electric Cooperative should not be considered by any party as establishing a precedent."

The findings made and conclusions stated in my order of November 21st, 1955 (except for the reference to bank-

ruptcy proceedings in that order) also apply to, and are adopted with respect to, the refusal of plaintiff Gillmor to testify; provided that, under the circumstances recited above, I conclude that no opportunity should be accorded him to retract his refusal.

The findings made and conclusions stated in my order of November 21st, 1955, also apply to, and are adopted with respect to, the failure of plaintiffs Gillmor and First Iowa Hydro Electric Cooperative to pay into court the sum of $2,500 as required by order of the Court. I also note that the Court has set for January 20th next a hearing with respect to the failure of plaintiffs to pay said sum (among other matters). The pendency of that [fol. 162] matter before the Court is an additional reason for my denial of the Motions to Dismiss now before me in so far as based on failure of any plaintiff to pay or cause to be paid the $2,500 sum.

In addition to an order of dismissal the present Motions to Dismiss ask that costs be assessed against the plaintiffs. I infer from the record that the Court may have in contemplation the assessment to defendants of costs on discovery deposition proceedings or some portion of such costs. Such costs are by far the most substantial item of total costs to date. The assessment of costs must ultimately be passed upon by the Court in any case. Under the circumstances, I consider it more proper for me to refrain from ruling with respect to assessment of costs.

It is ordered:

1. The Motions to Dismiss are granted in so far as based upon Division I, upon Division III, subdivision 1, and upon Division IV, subdivisions 1 and 3.

2. The Motions to Dismiss are denied in so far as based upon Division II, upon Division III, subdivision 2, and upon Division IV, subdivision 2, without prejudice to renewal of motion to dismiss on the same grounds at any time.

3. The motion to assess costs against plaintiffs is denied without prejudice to its renewal at any time.

4. In accordance with paragraph 1 above this action is dismissed as to plaintiffs F. A. E. Gillmor and First Iowa Hydro Electric Cooperative, such dismissal to operate as an adjudication upon the merits; provided that such dismissal is expressly made subject to confirmation by the Court upon the filing of my report referring to such dismissal.

This order will be served by the Clerk by mail, in the case of defendants by serving their attorney of record and in the case of plaintiffs by serving their attorneys of record and plaintiffs themselves.

Dated January 16, 1956.

EDWARD A. DOERR,
Special Master

[fol. 163] (Supplemental Report of Special Master

(Filed in U. S. District Court on January 17, 1956)

Edward A. Doerr, having been appointed Special Master herein by order of the Court dated September 21st, 1955, and having, on January 4th, 1956, filed a report as such, submits this, his supplemental report as such Special Master and so respectfully states:—

1. In the course of proceedings on reference, the deposition of plaintiff F. A. E. Gillmor was duly scheduled to be taken on January 10th, 1956, pursuant to Rules 28 and 30 of the Federal Rules of Civil Procedure. At the time and place fixed for such taking, the said plaintiff was present but refused to testify and, after announcing such refusal and contrary to the advice and directions of the Special Master then given to him, left the room and place fixed for such hearing.

2. Following such refusal, defendants filed their Motion to Dismiss on January 10th, 1956. Said Motions to Dismiss are based in part upon the refusal by the said plaintiff to testify and move for dismissal of this action as to said plaintiff and plaintiff First Iowa Hydro Electric Cooperative.

3. On January 16th, 1956, the Special Master made an order on said motion. In so far as said order related to the refusal by said plaintiff to testify, the motion was granted and this action was dismissed as to plaintiff F. A. E. Gillmor and First Iowa Hydro Electric Cooperative (the individual plaintiff being both director and officer of the plaintiff cooperative). Said order expressly provides that the dismissal is to operate as an adjudication upon the merits.

4. Said Motions to Dismiss are also based in part upon the failure by plaintiffs F. A. E. Gillmor and First Iowa Hydro Electric Cooperative to pay into the registry of the Court the sum of $2,500 in accordance with orders of the Court dated September 21st, 1955, and September 27th, [fol. 164] 1955. The Special Master's said order dated January 16th, 1956, denies said Motions to Dismiss in so far as based on said grounds (without prejudice to renewal of motion) and denies the assessment of costs against plaintiffs (without prejudice to renewal of motion for such assessment).

5. The findings of fact and conclusions of law of the Special Master which are material to this supplemental report are stated in said order of January 16th, 1956, and in the certain order dated November 21st, 1955, to the extent incorporated in the later order by reference. Said orders and said Motions to Dismiss are on file in the office of the Clerk and are made a part of this report.

6. Filed herewith is a transcript of the proceedings in the January 10th, 1956, hearing before the Special Master. Such transcript is entitled in this matter and is identified by mark of "Exhibit A to Supplemental Report of Special Master."

The transcript so marked together with Exhibits 1 to 5, inclusive, to the report of the Special Master, filed herein on January 4, 1956, are made a part of this report. The Special Master certifies that the transcript herewith filed truly states the proceedings which it purports to state and, together with said Exhibits 1 to 5, inclusive, comprises a record of all proceedings and evidence before the Special Master to the extent material to this supplemental report.

All written orders made by the Special Master and all written applications made by the parties in the course of the reference have been filed in the office of the Clerk. To the extent that such orders and applications are, or may be urged by any party to be, material, they are made a part of this supplemental report.

7. Said order of January 16th, 1956, is expressly made subject to confirmation by the Court upon its consideration of this supplemental report. Otherwise said order finally disposes of this action as to plaintiffs F. A. E. Gillmor and First Iowa Hydro Electric Cooperative. Because of such final nature of said order, the Special Master presently submits this report in relation to said order, at the same time reserving (subject to the pleasure of the Court) all matters other than those so disposed of by this supplemental report and the report of the Special Master filed herein on January 4th, 1956.

8. The Special Master submits the following statement of time spent by him to date on the reference:

(a) Time spent in and with relation to deposition proceedings 2 and $\frac{1}{2}$ days and 26 and $\frac{1}{4}$ hours.

(b) Time spent otherwise than as in (a) 1 and $\frac{1}{2}$ days and 30 hours.

The Special Master asks allowance of compensation to him at the rate of $150.00 per day and $25.00 per hour for the time so spent and further asks reimbursement for certain expenditures, all as shown in the following statement:

For time spent in and with relation to deposition proceedings	$1,031.25
[fol. 165] For time otherwise spent	2475.00
1955	
Oct. 28 Paid Northwestern Bell Telephone Co. phone calls	7.61
Nov. 2 Paid Donald E. Saxton Court Reporter	86.00

Nov. 2	Paid Paul J. Carlson—Court Reporter	15.60
Nov. 23	Paid Paul J. Carlson—Court Reporter	19.50
Dec. 23	Paid Paul J. Carlson—Court Reporter	10.60
Total		$3,645.56

The Special Master respectfully recommends that the said order made by him ~~of date~~ January 16th, 1956, be confirmed and this supplemental report approved.

EDWARD A. DOERR
Special Master

[fol. 166] (Exceptions and Objections of Plaintiffs to Report of Special Master filed January 4, 1956.)

(Filed in U. S. District Court on January 19, 1956.)

Come now the plaintiffs in the above entitled cause and their Attorneys of Record in said cause in behalf of the plaintiffs and in behalf of the Attorneys of Record as such Attorneys of Record for plaintiffs in this cause and object and except to the report of the Special Master, which was filed in the office of the Clerk of this Court on January 4, 1956 and which was served on these plaintiffs by mail, coming into their hands on January 11, 1956, and as grounds, therefore, respectfully show to the Court.

1. These parties incorporate herein by reference the "Petition for Review" in which they ask the Court to revise an order made on December 22, 1955, by Edward A. Doerr, Special Master, dismissing the above entitled cause with prejudice and said Petition for Review is hereby incorporated herein with the same effect as if set out verbatim and urged as a ground for objection and exception to the said report of the Special Master, filed January 4, 1956, and ask the court to refuse to confirm said report or to approve the same or the action indicated or taken by the Special Master in connection with the matters set forth in the order of December 22, 1955, and the report of the Special Master filed January 4, 1956.

[fol. 167] 2. The order appointing Edward A. Doerr as Special Master in this cause was illegal and constituted an abuse of discretion upon the part of Judge William F. Riley, in that no extraordinary circumstances or conditions appeared from the record in this case authorizing such appointment within the meaning and intent of the Federal Rules of Civil Procedure permitting a reference or appointment of a Master.

Under this record, the facts were not sufficient to warrant the appointment or reference by the District Judge of the issues to a Special Master or to authorize the filing of findings of facts and conclusions of law by such Special Master.

3. The fact that the Judge's calendar is congested in this district and that the Judge is busy with other matters would not constitute a legal reason for the reference of this case or an excuse or justification for the appointment of a Special Master or give the District Judge the right to appoint such Special Master under the rules of civil procedure.

4. The action of the trial Judge in making an order appointing a Special Master with the broad powers attempted to be delegated to such Master as found in the order of reference in this case appointing Edward A. Doerr as Master amounts to a refusal on the part of the Judge to try the case and amounts to a failure and refusal upon the part of the Judge to perform a duty and a judicial function imposed on him by law, constitutes an abuse of discretion and a failure to observe the Federal Rules of Civil procedure prescribed by the Supreme Court of the United States and is beyond the Court's legal power under the rules which permit a reference, and the order is illegal and void.

5. The order appointing Edward A. Doerr as Special Master denies to the plaintiffs and their counsel of record, the right to have this case tried by a Judge and jury, although a jury has been timely demanded, and amounts to [fol. 168] an attempt upon the part of the Trial Court to abdicate its duty to determine by the Judge and jury the controversy presented and an effort to devolve that duty

upon one of its officers and subjects the parties to needless expense and delay as the Master's bills filed in this case have already exceeded $5,000.00 and the depositions are not yet completed.

6. The action of a Special Master in attempting to dismiss the case will prejudice as to all parties was arbitrary, illegal, and beyond the power and jurisdiction of the Special Master and under the record in this case, this Court would have no right or power or authority to confirm such order, even if the Court had the power to refer the matter to a Special Master. Therefore, the action of the Special Master on December 22, 1955 and on January 4, 1956, as set out above, was illegal and void for all the reasons given.

These Attorneys further submit that the plaintiffs, Harry Strong and F. A. E. Gillmor now seek a dismissal of the cause by indirect means and by order of Court, knowing full well that should they come into this Court and move for such dismissal for the sole purpose of discharging and getting rid of their present Attorneys of Record, such a motion would be denied and now the present subterfuge is an attempt to obtain a result indirectly which is not permitted to them by law and that for the Court to permit itself to be hood-winked by such means into ordering such dismissal would result in great financial loss and waste of effort, both to said Attorneys of Record and the majority of members of said Cooperative and these Attorneys of Record and the majority of the directors would be deprived of rights and interests guaranteed to them both by provisions of the constitution above set forth and by statutes and the Rules of Civil Procedure.

8. The parties further show to the Court that for each and all the reasons [hereto for] given, the order appointing the Special Master, the proceedings before the Special Mas- [fol. 169] ter and the action taken by the Special Master in attempting to dismiss this case with prejudice resulted in a deprivation of property without due process of law as to all plaintiffs and their Attorneys of Record in violation of the rights to due process of law guaranteed to them by the provisions of Section One of the Fourteenth amendment to the Constitution of the United States and of due process of

law guaranteed to them by the Fifth amendment to the Constitution of the United States and results in a denial of their constitutional rights to trial by jury in violation of a right to a jury trial guaranteed to them by the Seventh amendment to the Constitution of the United States, as the parties have made timely demand for trial by jury in this case.

Respectfully submitted,

JAMES D. FRANCE,

XAVIER C. NADY,
First National Bank Bldg.,
Tipton, Iowa,

JAMES R. McMANUS,

ALLAN R. SHEPHERD,
417 Fleming Bldg.,
Des Moines, Iowa;
Attorneys for Plaintiffs.

[fol. 170] (Petition of Plaintiffs for Review.)

(Filed in U. S. District Court on January 19, 1956.)

In The United States District Court
For The Southern District Of Iowa
Davenport Division

First Iowa Hydro Electric Cooperative, et al.,
Plaintiffs,
No. 1-224. vs. Civil Action.
Iowa Illinois Gas and Electric Company, et al.,
Defendants.

Come now the plaintiffs and their Attorneys of Record in said cause in behalf of the plaintiffs and in behalf of the Attorneys of Record for plaintiffs in said cause and respectfully petition this Court to review an order made by Edward A. Doerr, Special Master in said cause on January 16, 1956, dismissing the above entitled cause with prejudice as to the plaintiff, First Iowa Hydro Electric Cooperative and the plaintiff, F. A. E. Gillmor, and to revise said order,

vacate it, and set it aside for the reasons set forth in the Petition for Review heretofore filed by the same parties, asking the court to revise, vacate and set aside an order made by Edward A. Doerr, Special Master in said cause on December 22, 1955, and said petition for review is incorporated herein by reference with the same force and effect as if set forth at length herein and the reasons therein given are advanced as grounds for this Court to revise, vacate and set aside said order made by the Special Master, January 16, 1956, attempting to dismiss the cause as to plaintiffs, F. A. E. Gillmor and First Iowa Hydro Electric Cooperative.

JAMES D. FRANCE,

XAVIER C. NADY,

JAMES R. McMANUS,

ALLAN R. SHEPHERD,
Attorneys for Plaintiffs.

[fol. 171] (Motion of Plaintiffs to vacate Order appointing Special Master)

(Filed in U. S. District Court on January 19, 1956.)

Come now the plaintiffs and their Attorneys of Record, in behalf of plaintiffs and in behalf of their Attorneys of Record, and move the court to make an order vacating and setting aside the order made by this Court on Spection 21, 1955, appointing Edward A. Doerr Special Master in this cause, for each and all of the reasons set forth in the Petitions For Review of the orders of the Special Master which were filed in this cause with respect to the orders made by the Special Master on December 22, 1955, and January 16, 1956, and the grounds stated in the objections and exceptions to the report of the Special Master which was filed January 4, 1956, and to the supplemental report which was filed January 17, 1956, and the objections urged and interposed orally in the record by these parties prior to each hearing and proceeding before said Special Master and said reasons, grounds and objections are hereby incorporated

herein by reference thereto and made a part hereof as fully as if set forth at length herein, in support of this motion.

JAMES R. McMANUS,

ALLAN R. SHEPHERD,
417 Fleming Bldg.,
Des Moines, Iowa,

JAMES D. FRANCE,

XAVIER C. NADY,
First National Bk. Bldg.,
Tipton, Iowa,
Attorneys for Plaintiffs.

[fol. 172] (Memorandum of District Court of Decision and Order for Judgment.)

(Filed in U. S. District Court on January 25, 1956.)

The following matters were heard by the Court with consent of all parties and were submitted on January 20, 1956;

1. The motions of defendants to dismiss the complaint as to plaintiff Harry J. Strong and all other plaintiffs, filed on October 10, 1955.

2. The Report of the Special Master filed on January 4, 1956, and his order filed December 22, 1955.

3. The motions of defendants to dismiss the complaint as to plaintiff F. A. E. Gillmor and as to plaintiff First Iowa Hydro Electric Cooperative, filed January 16, 1956.

4. The Supplemental Report of the Special Master filed January 17, 1956, and his order filed January 16, 1956.

5. The Petition for Review filed by plaintiffs on January 3, 1956, and their Petition for Review filed January 19, 1956.

[fol. 173] 6. The exceptions and objections of plaintiffs to the January 4, 1956 Report of the Special Master, filed January 19, 1956.

7. The objections and exceptions of plaintiffs to the January 17, 1956 Supplemental Report of the Special Master, filed January 19, 1956.

8. The motion of plaintiffs to vacate the order appointing the Special Master, filed January 19, 1956.

9. The motion of defendants to strike plaintiffs' motion to vacate order appointing Special Master, made in open court on January 20, 1956.

10. The motion of defendants renewing that portion of their October 10, 1955 and their January 16, 1956 motions to dismiss for failure of plaintiffs to comply with the Court's deposit orders of September 21 and September 27, 1955, made orally in open court on January 20, 1956.

Plaintiffs appeared by their attorneys of record, James R. McManus, Allan R. Shepherd, Xavier C. Nady and James D. France. Union Electric Power Company appeared by its attorney, Robert H. Walker. Iowa-Illinois Gas and Electric Company appeared by its attorney, Larned A. Waterman. Iowa Power and Light Company appeared by its attorney, Howard A. Steele. Iowa Southern Utilities Company appeared by its attorneys, Maxwell A. O'Brien and Robert Valentine. Interstate Power Company appeared by its attorneys, E. Marshall Thomas and Clement F. Springer. Kansas City Power and Light Company appeared by its attorneys, Joseph J. Kelly, Jr. and Earl Smith. Iowa Electric Light and Power Company and Northwestern Light and Power Company appeared by their attorneys, V. Craven Shuttleworth, Tyrell M. Ingersoll and Harry E. Wilmarth. Iowa Public Service Company appeared by its attorney, Sylvester F. Wadden, and [fol. 174] Iowa Utilities Association appeared by its attorneys, Frederic M. Miller and Sherwin J. Markman. Defendant Wisconsin Power and Light Co. was not served with process and has not appeared in this action. Reference herein to "defendants" excludes such defendant. In conformity with the Rules, the Court makes—

Findings of Fact

The Court finds the following chronology of events is pertinent to the matters before the Court:

1. The action was commenced February 18, 1954, and seeks the recovery of $120,000,000 in treble damages for alleged violations of the federal antitrust laws.

2. On March 10, 1954, Union Electric Power Company, one of the defendants, noticed the depositions of the individual plaintiffs and others.

3. On May 16, 1955, the Court ordered the deposition of one of the plaintiffs, Harry J. Strong, the secretary, treasurer, director and general manager of plaintiff, First Iowa Hydro Electric Cooperative. In this order the Court also constrained all the defendants to participate in the deposition.

4. On June 6, 1955, the deposition of Harry J. Strong commenced pursuant to court order and under the appointment of Wayne G. Cook, as Special Master, with the prior consent of all parties.

5. On June 23, 1955, the Special Master ordered the production of the bank records of the deponent because of the commingling of funds of the corporate plaintiff in his personal account, and ordered a two-weeks' recess in the deposition to permit the defendants an opportunity to obtain and inspect such records.

6. On July 12, 1955, the deposition of Harry J. Strong recessed until July 25, 1955, to permit the Court to dispose of matters raised by plaintiffs in connection with their proposed efforts to remove the Special Master. (On July 18, 1955, plaintiffs filed a motion to remove Wayne G. Cook as Special Master, which the Court subsequently denied.)

[fol. 175] 7. On July 22, 1955, the Court ordered the deposition of Harry J. Strong to resume on August 1, 1955.

8. On August 1, 1955, the Special Master, at the request of plaintiffs, postponed to September 6, 1955, the date for the deposition of Harry J. Strong in order to give plaintiffs an opportunity to determine whether or not an appeal would be taken from the Court's order denying plaintiffs' motion to vacate the appointment of the Special Master.

9. On September 2, 1955, the Court, on its own initiative, but on behalf of the plaintiffs, ordered that the deposition of Harry J. Strong be resumed at a date later to be determined by the Court.

10. On September 15, 1955, the Court ordered that the deposition of Harry J. Strong be resumed on October 3, 1955.

11. On September 16, 1955, plaintiffs filed a motion for leave to remove their attorneys of record.

12. On September 21, 1955, the Court, having accepted the resignation of Wayne G. Cook, appointed Edward A. Doerr as Special Master. The powers accorded Mr. Doerr were intentionally expanded by the Court pursuant to Rule 53 partly because of collateral issues raised by the plaintiffs which were not connected with the pending discovery proceedings. In the same order, the Court also ordered the deposit forthwith into the registry of this Court of the sum of $2,500.00 by plaintiffs and the sum of $2,500.00 by defendants, to defray the fees and disbursements of the Special Master. This sum was duly paid by defendants.

13. On September 26, 1955, plaintiff Harry J. Strong, on behalf of all plaintiffs, filed a motion to defer the deposit. On September 27 the Court entered an order denying the motion and again ordered the deposit to be made forthwith.

14. On September 28, 1955, the Special Master, upon the informal request of Harry J. Strong, postponed the resumption date of his deposition to October 10, 1955.

[fol. 176] 15. On September 29, 1955, the Special Master ordered that the motion of plaintiffs to discharge their attorneys be heard on October 3, 1955.

16. On October 3, 1955, plaintiffs filed in the United States Court of Appeals for the Eighth Circuit a motion for leave to file petition for mandamus and injunction and for temporary stay order. This motion was denied by the appellate court on the same day.

17. On October 3, 1955, plaintiffs' motion to discharge their attorneys was heard and submitted to the Special Master. Plaintiffs defaulted at this hearing. On October 5, 1955, the Special Master nonetheless entered a conditional order of discharge.

18. On October 10, 1955, Harry J. Strong at the resumption of his deposition expressly refused to testify, although instructed so to do twice by the Special Master. On the same date defendant Union Electric Power Company filed motions to dismiss, which were joined in by all other defendants. (These motions were filed with the Special Master on October 10, 1955, and with the Clerk on October 11, 1955.)

19. On October 10, 1955, plaintiff Harry J. Strong filed an affidavit of prejudice directed against the presiding judge.

20. On October 17, 1955, plaintiffs, individually, and without acting through their counsel of record, filed various motions, including one to expunge the deposition of Harry J. Strong. On October 21, 1955, the Court entered its order overruling the affidavit of prejudice filed by plaintiff Harry J. Strong.

21. On October 28, 1955, the Special Master entered an order striking from the court file the various motions filed individually by plaintiffs on October 17, 1955.

22. On November 18, 1955, the motions to dismiss filed by defendants on October 10, 1955 were heard and submitted to the Special Master.

23. On November 21, 1955, the Special Master entered his order finding that the refusal of Harry J. Strong to testify on October 10, 1955 was flagrant, willful and with- [fol. 177] out justification or excuse and had the necessary effect of disrupting orderly procedure and hampering defendants in making their defense. The Special Master, however, ordered that the deponent be given an additional and final chance to testify and ordered his deposition to resume on December 6, 1955. The Special Master also found that the failure of all the plaintiffs to make the

deposit required under the September 21 and 27 orders of the Court was flagrant, willful and without justification or excuse.

24. On November 28, 1955, certain individual plaintiffs, F. A. E. Gillmor, Harry J. Strong and P. H. Naber, filed notice of appeal to the United States Court of Appeals for the Eighth Circuit from the order of the Special Master of October 28, 1955, striking the various motions theretofore filed by the individual plaintiffs. No review of such order by this Court was ever sought by any plaintiff.

25. On November 29, 1955, the Special Master, upon the oral request of plaintiffs through their attorneys of record, delayed the resumption of Harry J. Strong's deposition until December 20, 1955.

26. On December 20, 1955, plaintiff Harry J. Strong at the resumption of his deposition again expressly refused to testify, although he was then and had been previously advised by the Special Master of the consequences of such refusal. The witness stated that he would take his chances on a dismissal and adhered in his refusal to testify. The witness was informed that the defendants were invoking the sanctions permitted by Rules 37(d) and 41(b), which would result in a dismissal of the action as to plaintiffs Harry J. Strong and First Iowa Hydro Electric Cooperative.

27. On December 22, 1955, the Special Master entered his order of dismissal as to plaintiffs Harry J. Strong and First Iowa Hydro Electric Cooperative, which the Court treats as a recommendation of dismissal.

28. On December 22, 1955, the Special Master order the deposition of plaintiff F. A. E. Gillmor, president and director of plaintiff First Iowa Hydro Electric Cooperative, to commence on January 10, 1956.

[fol. 178] 29. On January 3, 1956, plaintiffs by their attorneys of record filed a petition to review the order of the Special Master entered on December 22, 1955.

30. On January 4, 1956, the Special Master filed his Report on the dismissal of the action as to plaintiffs Harry J. Strong and First Iowa Hydro Electric Cooperative.

31: On January 9, 1956, the Court assigned for hearing on January 20, 1956, the Report of the Special Master, plaintiffs' petition for review filed January 3, 1956, and the failure of plaintiffs to comply with the two deposit orders of the Court.

32. On January 10, 1956, plaintiff F. A. E. Gillmor at the taking of his deposition refused to testify, after being required by the Special Master to testify. Two of the defendants, orally and in the presence of F. A. E. Gillmor, moved to dismiss the action as to him upon the same grounds urged in defendants' motions to dismiss filed October 10, 1955. On the same day, all of the defendants joined in written motions of dismissal as to F. A. E. Gillmor and First Iowa Hydro Electric Cooperative.

33. On January 16, 1956, defendants' motions to dismiss were heard and submitted to the Special Master, who entered his order of dismissal on the same date, dismissing the action as to plaintiffs F. A. E. Gillmor and First Iowa Hydro Electric Cooperative, subject to confirmation by the Court.

34. On January 17, 1956, the Special Master filed his Supplemental Report on the dismissal of the action as to plaintiffs F. A. E. Gillmor and First Iowa Hydro Electric Cooperative. On the same day the Court ordered that such Supplemental Report be heard with the other matters assigned for hearing on January 20, 1956.

35. On January 19, 1956, plaintiffs filed their exceptions and objections to the Report of the Special Master filed January 4, 1956, their petition for review of the order of the Special Master filed January 16, 1956, and their objections and exceptions to the Supplemental Report of the Special Master filed January 17, 1956.

36. On January 19, 1956, plaintiffs filed with the Court their motion to vacate the appointment of a Special Master.

[fol. 179] 37. On January 20, 1956, in open court, defendants orally moved to strike plaintiffs' motion to vacate

the appointment of the Special Master and renewed their motions to dismiss the action as to all plaintiffs for failure to comply with the two deposit orders of the Court.

The Court makes the following additional findings of fact:

1. General.

I find that proper and timely service of pleadings, motions, orders and reports was made in all required instances. The several motions of defendants and the orders and reports of the Special Master were served personally on each of the named plaintiffs as well as upon their attorneys of record. Plaintiffs have not objected or excepted to any of the facts stated in any of the orders or reports of the Special Master, and such facts stand unchallenged. Defendants have not sought to impose any contempt penalty upon any of the plaintiffs, but have invoked the sanctions afforded by Rules 37(d) and 41(b). I find that the attorneys of record for the plaintiffs have no interest in the subject matter of the litigation. On October 5, 1955, the Special Master entered a conditional order of discharge as a result of his hearing on October 3, 1955 on the motion of plaintiffs to discharge their attorneys of record. I find that the plaintiffs have failed to exhaust the remedies afforded them by the conditional terms of that order and have failed to seek any review by this Court of the October 5 and 28, 1955 orders of the Special Master. The October 5 and 28 orders of the Special Master were ex parte as to defendants. The plaintiffs' claim that they are unrepresented by any attorney is without merit. I find that the plaintiffs are represented by James D. France, Xavier C. Nady, James R. McManus, Allan R. Shepherd, as attorneys of record, and the firm of Haley, Doty and Schellenberg appear of counsel.

2. Plaintiffs' Motion to Vacate the Appointment of the Special Master and Defendants' Motion to Strike the Same.

On May 23, 1955, the Court appointed Wayne G. Took as Special Master, following a conference with counsel for plaintiffs and counsel for several of the defendants. I find that plaintiffs have initially consented to the appointment of a Special Master.

[fol. 180] Mr. Edward A. Doerr was appointed as Special Master by the Court on September 21, 1955, following the resignation of Mr. Wayne G. Cook. Plaintiffs' motion to vacate the appointment of Mr. Doerr was not made to the Court until January 19, 1956, after the Special Master had issued various orders, rulings and reports. I find the plaintiffs' motion was not timely filed with the Court.

The complaint seeks recovery of $120,000,000 in treble damages and equitable relief under the antitrust laws. The period of time covered by the complaint extends from 1938 to 1954. There are ten defendants, whose separate answers pose evidentiary and procedural problems of great magnitude. The issues in this action involve engineering, financing, economic and other technical problems of vast complexity. The discovery proceedings, still in their early stages, have resulted in volumes of testimony and documents. The record discloses many difficult problems pertaining to marketability of power, project design, economic and engineering feasibility, financing methods and expectations, costs of construction and power, additional and numerous expert witnesses, and other allied matters which would be the subject of extended discovery proceedings requiring continual supervision to prevent oppression or hardship to any party. The documents which plaintiffs have voluntarily produced in response to defendants' interrogatories and which plaintiffs have produced under order of Court and order of the Special Master are detailed and voluminous. For example, the transcripts of the Federal Power Commission hearings exceed 5,000 pages.

I find that the issues are complicated and that the reference was not only proper but necessary in the interests of justice. This action, peculiarly and appropriately, requires the appointment of a Special Master.

The objection of the plaintiffs to the appointment of the Special Master, insofar as it is based upon an alleged deprivation of the right to trial by jury, must be denied. Rule 53 permits such an appointment, and this action required it. In my order of January 9, 1956, I pointed out that the appointment of the Special Master does not and cannot deprive plaintiffs of their right of trial by jury if their re-
[fol. 181] quest therefor has been seasonably made, nor

does it empower the Special Master ultimately to hear and determine the issues between the parties upon a trial of this cause. I further find that the appointment of the Special Master, Edward A. Doerr, was without prejudice to the plaintiffs.

3. Refusal to Deposit.

On September 21, 1955, the Court ordered plaintiffs to deposit forthwith the sum of $2,500.00 to defray fees and disbursements of the Special Master. A like sum was commanded of defendants and was duly paid by them into the registry of this Court. On September 26, Harry J. Strong, on behalf of plaintiffs, requested a deferment of their deposit, but this was denied by court order entered September 27, 1955, and the deposit was again ordered to be made by plaintiffs forthwith. The record discloses that plaintiffs had sufficient funds to make the deposit. Plaintiffs at no time sought to avoid the deposit on the grounds of insufficient funds. None of the individual plaintiffs has tendered the whole or any part of the required deposit. I find that plaintiffs had sufficient funds to make the deposit. I find that the failure of plaintiffs to make the required deposit was flagrant, willful and without justification or excuse. I find that such failure constituted a refusal to comply with the orders of this Court and should be subject to the sanctions permitted by Rule 41(b).

In their motions filed on October 10, 1955, defendants sought, under Rule 41(b), dismissal of the action against all of the plaintiffs for their failure to comply with the deposit orders of this Court. The motions are well taken.

4. The Refusal to Testify.

The deposition of Harry J. Strong was begun under an order of this Court, and its resumption was ordered both by this Court and by the Special Master. On September 28, 1955, the Special Master, upon the informal request of the witness, postponed the resumption date to October 10, 1955. On October 10, 1955, Harry J. Strong expressly refused to testify, although instructed twice by the Special Master to testify. The witness left the hearing room while one of the [fol. 182] defendants was attempting to advise him that sanctions would be sought under Rule 37(d), should he

persist in his refusal to testify. Despite such conduct, the Special Master gave the witness a final chance to testify and ordered his deposition to resume on December 6, 1955. In this order, which was entered on November 21, 1955, the Special Master found that the witness' refusal to testify was flagrant, willful and without justification or excuse and had the necessary effect of disrupting orderly procedure and hampering defendants in making their defense. The witness was and is secretary, treasurer, director and general manager of plaintiff First Iowa Hydro Electric Cooperative. The order provided that, if the witness again refused to testify, the action would be dismissed as to plaintiffs Harry J. Strong and First Iowa Hydro Electric Cooperative. The order was served on all of the named plaintiffs and on their attorneys of record. At the request of plaintiffs through their attorneys of record, the resumption date was postponed until December 20, 1955. On December 20, 1955, the witness was again present and again expressly refused to testify. He stated that he would take his chances on a dismissal of the action.

I find that plaintiff, Harry J. Strong, was secretary, treasurer, director and managing agent of plaintiff First Iowa Hydro Electric Cooperative. I find that his refusal to testify was flagrant, willful and without justification or excuse, and had the necessary effect of disrupting orderly procedure and was prejudicial to the defendants in making their defense. I find that the witness was given ample notice of the consequences of his failure to resume his deposition and was given ample opportunity to testify. On October 10, 1955, the defendants moved to dismiss the action as to plaintiffs Harry J. Strong and First Iowa Hydro Electric Cooperative, under Rule 37(d) and under Rule 41 (b). I find that the motions are well taken.

The Court order of March 10, 1954, provided that the deposition of Harry J. Strong was to proceed until completed. I find that that order and the subsequent orders of the Court and Special Master dealing with the resumption of Harry J. Strong's deposition were ignored by the witness. His conduct was contumacious, his attitude defiant, his reasons for refusing to testify invalid.

[fol. 183] On December 22, 1955, the Special Master ordered the deposition of plaintiff F. A. E. Gillmor, president and director of plaintiff First Iowa Hydro Electric Cooperative, to commence on January 10, 1956. On January 10, 1956, F. A. E. Gillmor refused to testify, although admonished by the Special Master. Instead, this plaintiff read a self-serving statement into the record and started to leave the hearing room. Before he departed, two of the defendants, orally and in his presence, moved to dismiss the action as to him upon the same grounds urged in defendants' motions to dismiss filed October 10, 1955. The witness had been served with copies of the Special Master's order of December 22, 1955, dismissing the action as to plaintiffs Harry J. Strong and First Iowa Hydro Electric Cooperative, and he was served with copy of the Special Master's report filed January 4, 1956. He was fully advised of the consequences of his refusal to testify.

I find that plaintiff F. A. E. Gillmor was president and director of plaintiff First Iowa Hydro Electric Cooperative. I find that the refusal of the witness to testify was flagrant, willful, and without justification or excuse and had the necessary effect of disrupting orderly procedure and was prejudicial to the defendants in making their defense. I find that, under the circumstances, there was no necessity for according this witness another chance to testify. As with witness Strong, the conduct of witness Gillmor was contumacious, his attitude defiant, his reasons for refusing to testify invalid. The [disrepect] which these parties exhibited toward judicial process is the proper subject of sanctions sought by defendants. On January 10, 1956, all of the defendants joined in written motions of dismissal of the complaint as to plaintiffs F. A. E. Gillmor and First Iowa Hydro Electric Cooperative. I find that the motions are well taken.

5. The Orders and Reports of the Special Master.

On January 4, 1956, the Special Master filed his Report, based on his orders of November 21, 1955 and December 22, 1955 pertaining to the dismissal of the action as to plaintiffs Harry J. Strong and First Iowa Hydro Electric Cooperative. On January 17, 1956, the Special Master filed

his Supplement Report, based on his order of January 16, 1956 dismissing the action as to plaintiffs F. A. E. Gillmor and First Iowa Hydro Electric Cooperative.

[fol. 184] Plaintiffs have not objected or excepted to any of the facts stated in such orders and reports, and such facts stand unchallenged.

I find that the facts stated in the aforesaid orders and Reports of the Special Master are correct and admitted. I find that the dismissals recommended by the Special Master should operate as an adjudication upon the merits.

I sustain the aforesaid orders of the Special Master, approve and adopt his orders, Reports and recommendations, except with reference to the deposit orders of this Court, and find that the action should be dismissed as to plaintiffs Harry J. Strong, F. A. E. Gillmor and First Iowa Hydro Electric Cooperative for the willful refusal of plaintiffs Strong and Gillmor, both officers and one the managing agent of the corporate plaintiff, to testify at the taking of their depositions.

6. Miscellaneous.

The record in this action does not disclose that any of the five directors of the corporate plaintiff directed its managing agent or any officers to testify or made any attempt to comply with the deposit orders.

None of the individual plaintiffs and no officer or representative of the corporate plaintiff other than the attorneys of record appeared or was physically present at any time during the course of the hearing held on January 20, 1956.

I find that the interests of justice would not be served by affording plaintiffs Strong and Gillmor another opportunity to testify or granting plaintiffs further time in which to comply with the deposit orders. Those who flaunt judicial authority may do so at the minimum peril of dismissal. Courts must be equally concerned with rights of a defendant. Those rights have been prejudiced in the present action by the conduct of plaintiffs Strong and Gillmor.

The fees and disbursements of the Special Master, Edward A. Doerr, contained in the Supplemental Report filed January 17, 1956, are reasonable and are hereby approved.

The fees and disbursements of both Special Masters should be borne equally by plaintiffs and defendants. Defendants should recover all other costs.

[fol. 185] Conclusions Of Law.

The Court makes the following conclusions of law:

1. The attorneys of record for the plaintiffs have no interest in the subject matter of this action.

2. The plaintiffs' petitions for review were heard by the Court on January 20, 1956. The relief therein sought must be denied. The exceptions and objections of plaintiffs to the Report of the Special Master filed January 4, 1956 and to the Supplemental Report of the Special Master filed January 17, 1956, should be overruled.

3. The motion of defendants renewing that portion of their October 10, 1955 and January 16, 1956 motions to dismiss for failure of the plaintiffs to comply with the Court's deposit orders must be sustained.

4. Any objection to the appointment of Edward A. Doerr as Special Master would of necessity have to be made to the Court appointing such Special Master. The plaintiffs failed to make timely objection to such appointment and have waived objection to such appointment.

5. The appointment of Edward A. Doerr as Special Master is valid and does not infringe upon or violate any of plaintiffs' constitutional rights.

6. Plaintiffs' motion to vacate the appointment of a Special Master should be overruled. Defendants' motion to strike plaintiffs' motion to vacate such appointment should be sustained.

7. The power to impose sanctions is a necessary corollary of the power to administer justice. Apart from rule or statute, a court has the inherent power to require a deposit of security for costs or to dismiss an action as against a

party who has failed to comply with an order of court. These matters are also expressly covered by the Federal Rules of Civil Procedure. I conclude that the action should be dismissed as against all of the plaintiffs for their willful failure to comply with the deposit orders of this Court.

[fol. 186] 8. I conclude that sanctions may be imposed under Rule 41 for the failure of a plaintiff to comply with court orders, and that the action should be dismissed as to Harry J. Strong under Rule 41. I conclude that the action as to plaintiff Harry J. Strong and plaintiff First Iowa Hydro Electric Cooperative should also be dismissed under Rule 37 for the failure of the witness, as a party and as an officer and managing agent of a corporate party, to resume his deposition.

9. I conclude that the action should be dismissed under Rule 37 as to F. A. E. Gillmor and First Iowa Hydro Electric Cooperative for the refusal of plaintiff F. A. E. Gillmor, president of plaintiff First Iowa Hydro Electric Cooperative, to testify in his deposition.

10. I further conclude that the dismissals are within the inherent power of the Court.

11. I conclude that the orders and reports and recommendations of the Special Master should be confirmed, except with reference to the deposit orders of this Court, and that defendants' motions to dismiss should be sustained.

12. I conclude that the dismissals should operate as an adjudication on the merits.

Order For Judgment.

It Is Ordered, Adjudged And Decreed that:

1. The action should be and is hereby dismissed as to plaintiffs, First Iowa Hydro Electric Cooperative, F. A. E. Gillmor, Carl J. Mitzner, Harry J. Strong, Harry Imel, and P. H. Naber.

2. Such dismissal shall operate as an adjudication upon the merits.

3. The fees and disbursements of Wayne G. Cook as Special Master and Edward A. Doerr as Special Master

[fol. 187] shall be assessed against and paid by the plaintiffs and defendants equally. The compensation of Wayne G. Cook was initially ordered to be advanced by defendants, but subject to final order of this Court. The fees and disbursements of both Special Masters shall be taxed one-half against plaintiffs and one-half against defendants, and defendants shall be credited for all advancements heretofore made. The fees and disbursements of Edward A. Doerr shall be paid within thirty days of entry of this judgment. Upon failure of either party to make such payment within the time allowed, the Clerk shall forthwith issue a writ of execution in favor of the Special Master, and against the delinquent party or parties. All other costs are taxed against plaintiffs, severally.

The Clerk is directed to enter judgment forthwith.

Dated at Des Moines, Iowa, this 25th day of January, 1956.

WILLIAM F. RILEY,
United States District Judge.

[fol. 188] (Judgment.)

(Filed in U. S. District Court on January 25, 1956.)

United States District Court
Southern District Of Iowa
Davehport Division

First Iowa Hydro Electric Cooperative, F. A. E. Gillmor, Carl J. Mitzner, Harry J. Strong, Harry Imel, and P. H. Naber, Plaintiffs,

No. 1-224. vs. Civil.

Iowa-Illinois Gas And Electric Co., Iowa Power and Light Co., Iowa Southern Utilities Co., Interstate Power Co., Union Electric Power Co., Kansas City Power And Light Co., Iowa Electric Light And Power Co., Northwest Light And Power Co., Wisconsin Power And Light Co., Iowa Public Service Co., Iowa Utilities Association, Defendants.

It Is Ordered, Adjudged And Decreed that:

1. The action should be and is hereby dismissed as to plaintiffs, First Iowa Hydro Electric Cooperative, F. A. E.

Gillmor, Carl J. Mitzner, Harry J. Strong, Harry Imel, and P. H. Naber.

2. Such dismissal shall operate as an adjudication upon the merits.

3. The fees and disbursements of Wayne G. Cook as Special Master and Edward A. Doerr as Special Master shall be assessed against and paid by the plaintiffs and defendants equally. The compensation of Wayne G. Cook was initially ordered to be advanced by defendants, but subject to final order of this Court. The fees and disbursements of both Special Masters shall be taxed one-half against plaintiffs and one-half against defendants, and defendants shall be credited for all advancements heretofore made. The fees and disbursements of Edward A. Doerr shall be paid within thirty days of entry of this judgment. Upon failure of either party to make such payment within the time allowed, the Clerk shall forthwith issue a writ of execution in favor of the Special Master, and against the delinquent party or parties. All other costs are taxed against plaintiffs, severally.

The Clerk is directed to enter judgment forthwith.

Dated at Des Moines, Iowa, this 25th day of January, 1956.

WILLIAM F. RILEY,
United States District Judge.

[fol. 190] Notice of Appeal

(Filed in U. S. District Court on February 16, 1956)

United States District Court
Southern District of Iowa
Davenport Division

First Iowa Hydro Electric Cooperative, F. A. E. Gillmor, Carl J. Mitzner, Harry J. Strong, Harry Imel, and P. H. Naber, Plaintiffs,
Civil vs. No. 1-224
Iowa-Illinois Gas and Electric Co., Iowa Power and Light Co., Iowa Southern Utilities Co., Interstate Power

Co., Union Electric Power Co., Kansas City Power and Light Co., Iowa Electric Light and Power Co., Northwest Light and Power Co., Wisconsin Power and Light Co., Iowa Public Service Co., Iowa Utilities Association, Defendants

Notice is hereby given that First Iowa Hydro Electric Cooperative, F. A. E. Gillmor, Harry J. Strong, and Harry Imel, plaintiffs above named, hereby appeal to the United States Court of Appeals for the Eighth Circuit from the final judgment entered in this action on the 25th day of January, 1956.

FIRST IOWA HYDRO ELECTRIC COOPERATIVE

By Harry J. Strong
Secretary

F. A. E. GILLMOR
Individual Plaintiff

HARRY J. STRONG
Individual Plaintiff

HARRY IMEL
Individual Plaintiff

J. ROGER WOLLENBERG

Haley, Doty & Wollenberg
1735 DeSales Street, N. W.
Washington 6, D. C.

Attorney for Appellants

Dated February 15, 1956

[fol. 191] Acknowledgement

Before me, Ethna White, a Notary Public in and for the District of Columbia, personally appeared on February 15, 1956, J. Roger Wollenberg, known to me as a member of the law firm of Haley, Doty & Wollenberg, 1735 DeSales Street, N. W., Washington, D. C., and acknowledged the signature of J. Roger Wollenberg on

the foregoing Notice of Appeal in Civil No. 1-224 to be his signature.

ETHNA WHITE
Notary Public, D. C.

My commission expires February 14, 1961.

[fol. 192] Designation of Contents of Record on Appeal

(Filed in U. S. District Court on March 19, 1956)

Come now First Iowa Hydro Electric Cooperative, F. A. E. Gillmor, Harry J. Strong, and Harry Imel, appellants, pursuant to Rule 75(a) of the Federal Rules of Civil Procedure and Rule 8(b) of the Rules of the United States Court of Appeals for the Eighth Circuit and designate the entire record, proceedings, and evidence in the above-entitled proceeding to be contained in the record on appeal in connection with the appeal filed herein on February 15, 1956 on behalf of the above-named appellants.

J. ROGER WOLLENBERG
Haley, Doty & Wollenberg
1735 De Sales Street, N. W.
Washington 6, D. C.
Attorney for Appellants

Dated March 16, 1956

[fol. 193] First Iowa Hydro Electric Cooperative et al, v. Iowa-Illinois Gas and Electric Co. (Case No. 15548)

Contents of Record.

Docket Entries

1954

Feb. 18,
Filed Complaint.

Mar. 10,
Filed Notice to Take Depositions Upon Oral

1955

May 16, Filed Order that Union Electric Power Co. will take depositions of Harry J. Strong at 9:00 A.M. on June 6, 1955, either at Davenport Bk. Bldg., or Grand Jury room in the Federal Bldg., in Davenport, Iowa, rental expense to be borne by defts; depositions to be taken from 9:00 A.M. to 12:00 noon and from 2:00 P.M. to 5:00 P.M. until completed, Saturdays and Sundays excepted; Michael T. Organ or Earl W. Radford, both of Chicago, appointed Commissioner; all documents heretofore filed by plaintiffs to be produced at the time of taking deposition; Harry J. Strong is directed to appear and present himself for examination until concluded; and all defendants are privileged to appear and examine or cross-examine the witness, Riley, J. (Ent. 2 OJ 551) (Notices to attys. mailed May 16, 1955).

May 23, Filed Order appointing Wayne G. Cook as Special Master in connection with taking of discovery depositions, Riley, J. (Ent. 2 OJ 558) (Notice to attys. mailed May 23, 1955).

June 4, Filed Memorandum order denying plaintiffs' Motion to assess attorney fees, Riley, J. (Ent. 2 OJ 563) (Notice to counsel mailed June 6, 1955).

July 30, Entered Order that original transcript of the discovery depositions of Harry J. Strong shall be filed with the Commissioner and held by the Commissioner until signed and certified, when it shall be sealed and filed with the Clerk and opened only by order of court; copies of transcript may be made to counsel of record and to Special Master but no copy of such copies, or any parts thereof shall be made or used by any counsel; the Com-
[fol. 194] missioner shall permit examination of the transcript by counsel and the Special Master only, Riley, J. (Ent. 2 OJ 611) (Notice to Attys. mailed July 30, 1955).

Aug. 29, Filed Notice of Entry of Appearance of Robert M. Bell and Bell, Farrar & Scott as attorneys for plaintiffs.

Aug. 31, Filed Plaintiff's Attorneys Motion to Quash Appearance of Bell, Farrar and Scott as attorneys for plaintiff.

Sept. 2, Filed Motion of Bell, Farrar & Scott, attorneys to withdraw their appearance at attorneys for the plaintiffs.

Sept. 2, Filed Clerk's Court Minutes.

Sept. 6, Entered Order with withdrawal of appearance of Bell, Farrar & Scott is accepted; and that Petition to Intervene shall not be filed, Riley, J. (Ent. 2 OJ 635) (Copies mailed to Bell, Farrar & Scott; Harry J. Strong, McManus, Shepherd, Nady and all attorneys of record.)

Sept. 16, Filed Motion for leave to remove France, France & Nady and James R. McManus and Allan R. Shepherd as attorneys for plaintiffs herein (Copies mailed to James D. France, X. C. Nady, James R. McManus and Allan R. Shepherd).

Sept. 21, Filed order accepting resignation of Wayne G. Cook as Special Master, Riley, J. (Ent. 2 OJ 670) (Copies mailed to all counsel, the individual pltffs., First Iowa Hydro Electric Cooperative, Wayne G. Cook and Edward A. Doerr on Sept. 22, 1955).

Sept. 21, Filed Order appointing Edward A. Doerr as Special Master, and that $2,500.00 shall be paid by pltffs. and $2,500.00 by defts. into the Registry of the Court for allowance of fees and disbursements of Special Master, Riley, J. (Ent. 2 OJ 671) (Copies mailed to all counsel, the individual pltfs. First Iowa Hydro Electric Cooperative, Wayne G. Cook and Edward A. Doerr on Sept. 22, 1955).

Sept. 26, Filed Plaintiffs' Motion to defer deposit of funds.

Sept. 27, Filed Memorandum and order denying motion to defer requirement of deposit, Riley, J. (Ent. 2 OJ 675).

Sept. 27, Entered order denying motion to defer requirement of deposit and that deposit of $2,500.00 be
[fol. 195] made forthwith, Riley, J. (Ent. 2 OJ 675) (Notice mailed to Edward A. Doerr, X. C. Nady, J. R. McManus and Harry L. Strong).

Sept. 29, Filed Order that motion of Pltffs. entitled "Motion for Leave to remove attys. for plaintiffs herein" shall be heard on October 3, 1955 at 2:00 P.M. in the Petit Jury Room, Federal Bldg., Davenport, Iowa, Edward A. Doerr, Special Master (Copies mailed to all counsel and all plaintiffs).

Sept. 29, Filed Resistance of France, France & Nady, James R. McManus and Allan R. Shepherd to motion to remove attorneys and application by attorneys for affirmative relief, with proof of service.

Sept. 30, Motion for Leave to Intervene.

Oct. 5, Filed Order overruling motion of Plaintiffs for leave to remove France, France & Nady and James R. McManus and Allan R. Shepherd as attorneys for plaintiffs herein and resistance to motion to remove attorneys and application by attorneys for affirmative relief, is denied, Edward A. Doerr, Special Master (Copies mailed to all plaintiffs and all counsel).

Oct. 5, Filed Opinion of Edward A. Doerr, Special Master (Copies mailed to all plaintiffs and all counsel).

Oct. 5, Filed Order that plaintiffs may submit written statements re Motion for leave to Intervene by October 12, 1955, Edward A. Doerr, Special Master (Copies mailed to all plaintiffs and all counsel).

Oct. 6, Filed Order filed on Oct. 3, 1955 in the U. S. Court of Appeals for the Eighth Circuit denying

motion for leave to file petition for mandamus and injunction for want of jurisdiction.

Oct. 10, Filed Affidavit of Prejudice by Harry J. Strong.

Oct. 11, Filed Motion of Deft. Union Electric Power Co. to Dismiss and joinder by other defendants and affidavit of service.

Oct. 11, Filed Amendment to Order of Oct. 6, 1955 adding "Defts. took no part in the hearing which was ex parte as to them", Edward A. Doerr, Special Master (Copies mailed to all pltfs. and all counsel).

Oct. 17, Filed Motion by plaintiffs to [exponge] from the record order dated Oct. 5, 1955, said order pertaining to a hearing on Oct. 3, 1955.

Oct. 17, Filed Plaintiffs' Resistance to Defts' Motion to Dismiss and application by pltfs. for affirmative relief. (Copies mailed to attys. for defts.)

Removed from file in accordance with Order of Special Master Dated October 28, 1955

Oct. 21, Filed Ruling and order on affidavit of Prejudice, entered order that affidavit of prejudice is not timely or sufficient and for other reasons fails to meet requirements of Sec. 144, Title 28, U.S.C.A; that proceedings be continued as though affidavit had not been filed, Riley, J. (Ent. 2 O.J. 693) (Copies mailed to all pltfs., their attys. of record, all counsel for defts. and to Special Master)

Oct. 24, Filed Order that hearing will be held at 930 Davenport Bk. Bldg., Davenport, Iowa on Oct. 28, 1955 at 10:30 A.M. re entry of proposed form of Order (Copies mailed to all pltfs. and their attys. of record).

[fol. 196]

Oct. 28, Filed Order directing that Motion to [exponge] a document called deposition of Harry J. Strong, Motion to [exponge] from the record order dated Oct. 5, 1955, said order pertaining to a hearing on Oct. 3, 1955, Motion to [exponge] from the record an order dated Oct. 11, 1955 and order pertaining to motions to dismiss and hearing on affidavit of prejudice, motion to [exponge] an order of Judge Wm. F. Riley dated Oct. 14, 1955 in reference to affidavit of prejudice and resistance to defendant's motion to dismiss and application for affirmative relief and Motion in Resistance to the substitution of any party plaintiff be stricken from the files and shall be physically removed; no pleading tendered by plaintiffs for filing not signed by an attorney of record shall be filed by the Clerk; no pleading tendered by plaintiffs shall be filed by the Clerk until pltfs. pay into the Registry of the Court the sum of $2,500.00 as per orders of Sept. 21st and Sept. 27th, 1955; no pleading which may be filed by defts. is required to be served on pltfs., except upon attys. of record for pltfs. no order which may be filed is required to be served on pltfs. except upon their attys. of record, Edward A. Doerr, Special Master (Copies mailed to all pltfs. their attys. of record and to attys. of record for defendants).

Nov. 9, Filed Order for the payment of Fees of Special Master, Wayne G. Cook, Riley, J. (Ent. 3 OJ 16).

Nov. 15, Filed Order for the payment of Fees of Special Master showing payment of $3,043.38 on Nov. 10, 1955 signed by Wayne G. Cook (Copies mailed to pltfs. and their attys. of record).

Nov. 21, Filed Order on Motion to Dismiss, that deposition of Harry J. Strong will be resumed on Dec. 6, 1955 at 11:00 o'clock A. M. at 725 Davenport Bank Bldg., Davenport, Iowa; that Harry J. Strong appear at said time for taking of deposition; in the event that Harry J. Strong shall not comply, then Div. I and Div. III para. 1, of Mo-

tion to Dismiss will be granted against Harry J. Strong and First Iowa Hydro Electric Cooperative and an order of dismissal supplementary to this order will be made; Div. II and Div. III, para. 2 of Motions to Dismiss of Defts. are denied without prejudice to the renewal thereof at any time, Edward A. Doerr, Special Master (Copies mailed to all pltfs. their attorneys of record and to attys. of record for defts.).

Dec. 2, Filed Order amending order of Nov. 29, 1955 by adding: "In making the application for delay herein referred to pltfs. by their attys. of record, have expressly reserved the objections to the
[fol. 197] order of reference herein which are asserted upon constitutional grounds and which have been stated at the several hearings in which pltfs. have taken part, following the appointment of the present special master" Edward A. Doerr (Copies mailed to all pltfs., their attys. of record and to attys. of record for defts.).

Dec. 22, Filed Order dismissing action as to plaintiffs Harry J. Strong, and First Iowa Hydro Electric Cooperative, such dismissal to operate as an adjudication upon the merits, Edward A. Doerr, Special Master (Copies mailed to all pltfs., their attys. of record, attys. of record for defts. and Michael T. Organ, Comm.)

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Jan. 3, Filed Plaintiffs' Petition for Review and Proof of Service.

Jan. 4, Filed Report of Special Master.

Jan. 4, Filed Exhibits 1, 2, 3, 4 and 5 to Report of Special Master.

Jan. 10, Filed Motion of Union Electric Company to Dismiss as to E. A. E. Gillmor, and Joinder by other defendants.

Jan. 16, Filed Order that Motions to Dismiss are granted as based upon Div. I, Upon Div. III, Subdivision I, and upon Div. IX, subdivisions 1 and 3; Motions to Dismiss are denied as based upon Div. II,

Upon Div. III, subdivision 2, and upon Div. IV, subdivision 2, without prejudice to renewal of motion to dismiss; Motion to assess costs against pltfs. is denied without prejudice to its renewal; as per Para. 1 above, action is dismissed as to pltfs. F. A. E. Gillmor and First Iowa Hydro Electric Cooperative, such dismissal to operate as an adjudication upon the merits, provided that such dismissal is expressly made subject to confirmation by the Court, Edward A. Doerr, Special Master. (Copies mailed to all pltfs., their attys. of record and attys. for defts.).

Jan. 17, Filed Supplemental Report of Special Master.

Jan. 17, Filed Exhibit A to Supplemental Report of Special Master.

Jan. 19, Filed Petition of Plaintiffs for Review of an Order made by Special Master on Jan. 16, 1956.

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Jan. 19, Filed Plaintiffs' Exceptions and Objections to Report of Special Master filed Jan. 4, 1956.

Jan. 19, Filed Plaintiffs' Objections and Exceptions to Supplemental Report of Special Master filed Jan. 17, 1956.

Jan. 19, Filed Plaintiffs' Motion to Vacate Order appointing Special Master.

Jan. 20, Filed Clerk's Court Minutes.

Jan. 25, Filed Memorandum of Decision and Order for Judgment, Riley, J.

Jan. 25, Entered Judgment dismissing action as to plaintiffs, First Iowa Hydro Electric Cooperative, F. A. E. Gillmor, Carl J. Mitzner, Harry J. Strong, Harry Imel and P. H. Naber, such dismissal operating as an adjudication upon the merits; the fees and disbursements of Wayne G. Cook, as Special Master in the amount of $3,043.38, and Edward A. Doerr, a Special Master in the amount of $3,645.56, is assessed against and to be paid by the plaintiffs and defendants equally; the

compensation of Wayne G. Cook was initially ordered to be advanced by defendants, but subject to final order of this Court; the fees and disbursements of both Special Masters shall be taxed one-half against plaintiffs and one-half against defendants, and defendants shall be credited for all advancements heretofore made; the fees and disbursements of Edward A. Doerr shall be paid within thirty days of entry of this judgment; upon failure of either party to make such payment within the time allowed, the Clerk shall forthwith issue a writ of execution in favor of the Special Master, and against the [delinquint] party or parties; all other costs in the amount of $..... are taxed against plaintiffs, severally, Riley, J. (Ent. 3 OJ 119) (Notice to attys. by mailing copies of Memorandum of Decision and Order for Judgment to all plaintiffs, and to all attorneys of record for plaintiffs and defendants and copy mailed to Special Master)

Feb. 16, Filed Notice of Appeal of First Iowa Hydro Electric Cooperative, F. A. E. Gilbmor, Harry J. Strong, and Harry Imel from Judgment entered on January 25, 1956. Copies of Notice of Appeal mailed to X. C. Nady, First National Bank Bldg., Tipton, Iowa; James R. McManus, 417 Fleming Bldg., Des Moines, Iowa; James D. France, First National Bank Bldg., Tipton, Iowa; Larned A. Waterman, 717 Davenport Bank Bldg., Davenport, Iowa; Howard A. Steele, 510 Central National Bank Bldg., Des Moines, Iowa; Parrish, Guthrie, Colflesh & O'Brien, 902 Register &
[fol. 199] Tribune Bldg., Des Moines, Iowa; Robert W. Bergstrom, 327 So. LaSalle St., Chicago, Illinois; Robert H. Walker, 609 Blondeau St., Keokuk, Iowa; Earl Smith, 609 First National Bldg., Mason City, Iowa; T. M. Ingersoll, 1120 Merchants National Bank Bldg., Cedar Rapids, Iowa, Byron L. Sifford, 750 Orpheum Electric Bldg., Sioux City, Iowa; Frederic M. Miller, 400 Empire Bldg., Des Moines, Iowa and Edward A. Doerr, 931

Davenport Bank Bldg., Davenport, Iowa, this 16th day of February, 1956, E. E. Poston, Clerk, By /s/ Erna Hoefer, Deputy Clerk.

Mar. 19, Filed Designation of Contents of Record on Appeal filed by appellants, First Iowa Hydro Electric Cooperative, F. A. E. Gillmor, Harry J. Strong and Harry Imel.

List of Pleadings* and Orders Attached Hereto Which are to be Printed.

1954

1. Feb. 18, Complaint.

1955

2. May 23, Order Appointing Special Master.

3. June 4, Memorandum Order Denying Plaintiffs' Motion to Assess Attorney Fees.

4. July 30, Order Re Discovery Depositions of Harry J. Strong.

5. Aug. 29, Notice of Entry of Appearance of Robert M. Bell and Bell, Farrar & Scott as Attorneys for Plaintiffs.

6. Aug. 31, Motion to Quash Appearance.

7. Sept. 2, Petition to Intervene on Rule to Show Cause on the Motion of Attorneys Erance, France & Nady, James R. McManus and Allan R. Shepherd to Quash the Entry of Appearance of the Law Firm of Bell, Farrar & Scott.

8. Sept. 8, Motion.

* In each case dates used are those on which the pleading was filed.

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8A. Sept. 6, Order on Withdrawal of Appearance.

9. Sept. 16, Motion for Leave to Remove France, France & Nady, James R. McManus and

		Allan R. Shepherd as Attorneys for Plaintiffs Herein.
10.	Sept. 21,	Order Accepting Registration of Wayne G. Cook as Special Master.
11.	Sept. 21,	Order appointing Special Master.
12.	Sept. 26,	Motion to Defer Deposit of Funds.
13.	Sept. 27,	Order Denying Motion to Defer Requirements of Deposit.
13A.	Sept. 29,	Order.
14.	Sept. 29,	Resistance to Motion to Remove Attorneys and Application by Attorneys for Affirmative Relief.
15.	Sept. 30,	Motion for Leave to Intervene.
16.	Oct. 5,	Order (overruling Motion for Leave to Remove Attorneys).
17.	Oct. 5,	Opinion.
18.	Oct. 5,	Order (permitting plaintiffs to submit written statements on Motion to Intervene filed by Gooder, et al.).
19.	Oct. 6,	Order (U. S. Court of Appeals Case No. 15436).
19A.	Oct. 10,	Affidavit of Prejudice.
20.	Oct. 11,	Motions to Dismiss.
21.	Oct. 11,	Amendment to Order.
22.	Oct. 17,	Motion to [Exponge] From the Record Order Dated Oct. 5, 1955.
23.	Oct. 17,	Resistance to Defendants' Motion to Dismiss and Application by Plaintiffs for Affirmative Relief.
24.	Oct. 21,	Ruling and Order on Affidavit of Prejudice.
25.	Oct. 28,	Order.

26. Nov. 9, Order for the Payment of Fees to Special Master, Wayne G. Cook.

27. Nov. 21, Order.

28. Dec. 2, Order.

29. Dec. 22, Order.

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30. Jan. 3, Petition for Review.

31. Jan. 4, Report of Special Master.

32. Jan. 10, Motion to Dismiss.

33. Jan. 16, Order.

34. Jan. 17, Supplemental Report of Special Master.

35. Jan. 19, Exceptions and Objections to Report of Special Master.

36. Jan. 19, Petition for Review.

37. Jan. 19, Motion to Vacate Order Appointing Special Master.

38. Jan. 25, Memorandum of Decision and Order for Judgment.

39. Jan. 25, Judgment.

40. Feb. 16, Notice of Appeal.

41. Mar. 19, Designation of Content of Records on Appeal.